

REPORT OF THE INTEGRITY COMMISSION

No. 5 of 2018

Report of an investigation into
allegations of misconduct by
Adam Brooks MP



The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

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This report and further information about the Commission can be found on the website

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Speaker
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Dear Mr President

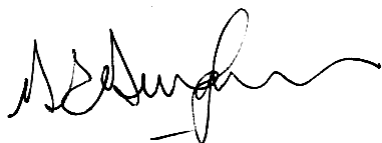
Dear Madam Speaker

Pursuant to section 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents *Report 5 of 2018* to Parliament, arising from an investigation into allegations of misconduct by Adam Brooks MP.

Yours sincerely



Aziz Gregory Melick AO RFD SC
Chief Commissioner
On behalf of the Board



Richard Bingham
Chief Executive Officer

26 November 2018

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INVESTIGATION FIELD

**An investigation into allegations of
misconduct by Adam Brooks MP**

21 November 2018

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Executive Summary

On 30 June 2016, the Integrity Commission received a complaint from the then Leader of the Opposition, Bryan Green, outlining his concern about how conflicts of interest between the business interests and public duties of the then Minister for Mining, Adam Brooks MP, had been managed, and how the Premier, the Hon Will Hodgman MP, had responded to these issues.

The allegations

An assessment was undertaken to determine the nature of the allegations and whether they should be investigated by the Commission. The assessment identified the following allegations:

That the Premier:

1. Failed to properly manage Mr Brooks' conflicts of interest; and
2. Facilitated a purposefully inadequate response to conflict of interest issues arising from Mr Brooks' private company.

That Mr Brooks:

1. Had an ongoing involvement in the operation and management of his business interests whilst a Minister.
2. Did not advise the Premier of his involvement in the operation and management of his business interests whilst a Minister.
3. Deleted emails that may have been evidence of misconduct through his ongoing involvement in the operation and management of his business interests.
4. Took steps to hinder an audit by the Crown Solicitor of Tasmania of his email account.
5. Misused information acquired in connection with the performance of his Ministerial functions.

The Premier's role

At the completion of the assessment, the Commission determined that the allegations relating to the Premier should be dismissed, given no evidence of misconduct involving the Premier was identified. Although it is reasonable to observe that the management of, and the response to, the issues relating to Mr Brooks did not progress as the Premier might have anticipated, there is no evidence that his response was improper or purposefully inadequate. Rather, he took advice from senior State Service executives to manage the conflict of interest issues.

The investigation process

The investigation involved obtaining and analysing relevant documents regarding the management of the conflict of interest issues and Mr Brooks' involvement with his private company, Maintenance Systems Solutions (MSS).

Of particular importance were emails sent from and received by Mr Brooks' MSS email account while he was Mining Minister. These emails were produced to the Commission by MSS under coercive notice.

Mr Brooks was interviewed by the Commission and also provided written evidence, in the form of a statutory declaration.

Managing Mr Brooks' conflict of interests

The Ministerial Code of Conduct as it existed when Mr Brooks was a Minister did not define a 'material conflict of interest'. However, published guidance notes to the Code stated that:

A material conflict of interest exists when a Minister in carrying out his or her official duties, is or reasonably appears to be, improperly influenced by private interests or when an official decision of the Minister could improperly advantage the Minister personally, or a close relative, especially, but not only, in a financial sense.

Applying that definition, the investigation found that Mr Brooks did not have a material conflict of interest relating to the business activities of MSS. He was not improperly influenced by his private interest in MSS, nor did any decisions which he made improperly advantage the business or him. He did, however, have conflict of interest issues to consider and deal with by virtue of his association with MSS.

The Premier took steps to facilitate Mr Brooks' management of these issues upon Mr Brooks' appointment as a Minister. The Premier required Mr Brooks to comply with the *Protocol for Managing Possible Conflicts of Interest – Minister for Mining, Minister for Racing and Minister for Building and Construction* ('the Protocol'), developed with input from senior executives within the State Service.

Step 2 of the Protocol required Mr Brooks to immediately appoint an independent manager of relevant businesses, and an independent agent to deal with the manager on Mr Brooks' behalf until such time as all Mr Brooks' interests were divested. The Protocol stated that '*this should ensure the Minister has no involvement, in any form, formal or otherwise, in the management and operation of any of these businesses*'.

Mr Brooks undertook in writing to the Premier to abide by the Protocol and agreed to remove himself from management and operational decisions of MSS.

The investigation findings

The investigation has found that Mr Brooks continued to be involved in the operation and management of MSS while a Minister.

The actions taken by Mr Brooks to comply with the Protocol and his reporting on these to the Premier were influenced by his view that he had no material conflict of interest. As outlined above, the investigation confirmed that his involvement with MSS did not amount to a material conflict of interest as defined for the purposes of the Ministerial Code of Conduct.

However the investigation concluded that Mr Brooks gave inaccurate written assurances to the Premier about his compliance with the Protocol, and failed to advise the Premier of the true nature of his involvement with MSS, when the Premier was relying on Mr Brooks' advice and updates.

Mr Brooks answered questions about his use of his MSS email account in State Parliament on 9 June 2016. The investigation identified that later that night, Mr Brooks accessed, collated, forwarded and then deleted a number of MSS emails. Mr Brooks did not inform anyone – other than his business manager – of his actions.

The investigation found that, in deleting the emails, Mr Brooks was motivated by genuine concerns about the protection of his family's privacy, his ongoing marital proceedings and of private business information that could have been detrimental to the interests of MSS if publicly released.

However, the investigation also found that Mr Brooks was motivated by a concern that the MSS emails had the potential to cause him political damage.

The investigation found that in deleting the emails Mr Brooks intended to prevent detection of evidence that he had not removed himself from management and operational decisions of MSS when he was a Minister, as required by the Protocol agreed with the Premier.

Following the deletions, on 10 June 2016 Mr Brooks proposed an audit of his email account to the Premier knowing that he had deleted emails from that account. Mr Brooks did not advise the Premier, and the Premier was not aware, that he had deleted emails from that account.

The Premier subsequently appointed the Crown Solicitor to audit all MSS emails sent from and received by Mr Brooks when he was a Minister, to determine whether he was participating in decisions concerning the operations of MSS, and whether he was provided information in relation to MSS that was not otherwise in the public domain.

Mr Brooks did not advise the Crown Solicitor, and the Crown Solicitor was not aware, of the deleted emails. The Crown Solicitor's audit has not been completed given that Mr Brooks has not provided the emails for the relevant period, due to his concerns about his marital proceedings and privacy.

The Commission concluded that even if Mr Brooks had been solely motivated by privacy concerns when deleting the emails, he should have advised the Premier of the deletions, both prior to and after the audit being formulated.

The Commission's determination of the matter

The Board of the Commission determined to refer the matter to the Premier for his consideration and action. The Board has made no specific recommendations as to what action the Premier should take.

The report was tabled in Parliament on 27 November 2018.¹

¹ Unless otherwise publicly available, documents and material that formed part of the investigation and are referenced in this report have not been released given they may contain private and confidential information.

PART A – Background

1. Introduction

1.1. The complaint

- [1] On 30 June 2016, the Integrity Commission received a complaint from the then Leader of the Opposition, Bryan Green MP, outlining his concern about how conflicts of interest between Mr Adam Brooks MP's business interests and his public duties had been managed, and how the Premier, the Hon Will Hodgman MP, had responded to these issues.
- [2] The complaint was accepted for assessment on 20 July 2016. There were a number of issues relevant to the complaint that required clarity before a determination could be made as to how to deal with it.
- [3] The assessment identified a number of allegations involving the Premier and Mr Brooks. The assessor recommended that the allegations against the Premier should be dismissed. The then (Acting) CEO agreed with this recommendation.

1.2. Allegations

- [4] The allegations against the Premier that were assessed and dismissed were that he:
 - i. failed to properly manage Mr Brooks' conflict of interest when he was Parliamentary Secretary for Small Business and Trade, and subsequently Minister for Mining; and
 - ii. facilitated a purposefully inadequate response to Mr Brooks' Maintenance Systems Solutions (MSS) email-related conflict of interest issues.

- [5] The allegations against Mr Brooks that were investigated were:

Allegation 1: Mr Brooks had an ongoing involvement in the operations and management of his business interests whilst a Minister. In doing so he may have breached the Ministerial Code of Conduct by:

- i. failing to take reasonable steps to avoid a material conflict of interest; and
- ii. failing to take reasonable steps to resolve a material conflict of interest.

Allegation 2: Mr Brooks did not advise the Premier of his ongoing involvement in the operations and management of his business interests whilst a Minister. In doing so he:

- i. may have breached the Ministerial Code of Conduct by failing to disclose a material conflict of interest; and
- ii. may have performed his Ministerial functions in a way that was dishonest or improper.

Allegation 3: On 9-10 June 2016 Mr Brooks deleted emails from his email account arb@mss.com.au that may have been evidence of misconduct through his ongoing involvement in the operation and management of his business interests. In doing so he may have performed his Ministerial functions in a way that was dishonest or improper.

Allegation 4: Mr Brooks took steps to hinder an audit by the Crown Solicitor of Tasmania of his email account arb@mss.com.au that may have detected evidence of misconduct through his ongoing involvement in the operation and management of his business interests. In doing so he may have performed his functions as a Member of Parliament in a way that was dishonest or improper.¹

Allegation 5: Mr Brooks had an ongoing involvement in the operations and management of his business interests, and in such circumstances may have misused information acquired in connection with the performance of his Ministerial functions. In doing so he:

- i. may have breached the Ministerial Code of Conduct by using information obtained in the course of his official duties so as to gain a direct or indirect personal advantage for himself or improperly for any other person or entity not enjoyed by the general public; and
- ii. may have performed his Ministerial functions in a way that was dishonest or improper.

- [6] Mr Brooks' answers to questions in Budget Estimates Committee hearings on 9 June 2016 are an important event in the context of this investigation. Although his answers that day are referenced in this report to provide important background information to the misconduct allegations, the Estimates hearings are a 'proceeding of Parliament', for the purposes of the *Integrity Commission Act 2009* (IC Act). As such, it is outside the jurisdiction of the Integrity Commission; it is a matter for Parliament to determine whether it has been misled.
- [7] Consideration of whether Mr Brooks had an ongoing involvement in the operations and management of his business interests while a Minister has been critical to the whole investigation.

2. Administration

2.1. Jurisdiction

- [8] The Commission's jurisdiction was invoked on receipt of the complaint on 30 June 2016 alleging that a public officer had committed misconduct.
- [9] Mr Brooks was a designated public officer by virtue of his position as a member of the House of Assembly of the Parliament of Tasmania. The Parliament of Tasmania is a public authority under s 5(1)(a) of the *IC Act*.

¹ Mr Brooks was no longer a Minister when the Crown Solicitor's audit (discussed later in this report) was formalised, so the Code of Conduct for Ministers does not apply to Allegation 4.

- [10] Mr Brooks was Minister for Mining, Minister for Racing, and Minister for Building and Construction between the dates 18 February 2016² and 13 June 2016 inclusive.³
- [11] The Commission takes the view that the definition of misconduct under the *IC Act*, as it applies to Members of Parliament, includes conduct by Ministers of the Crown in their executive, as well as parliamentary, capacity.
- [12] In accordance with s 6(1)(a) of the *IC Act*, members of Parliament are 'designated public officers' under the *IC Act*.
- [13] If proven, the alleged conduct could amount to misconduct. Under s 4 of the *IC Act*, 'misconduct' is defined as:
- (a) conduct, or an attempt to engage in conduct, of or by a public officer that is or involves –*
- (i) a breach of a code of conduct applicable to the public officer; or*
- (ii) the performance of the public officer's functions or the exercise of the public officer's powers, in a way that is dishonest or improper; or*
- (iii) a misuse of information or material acquired in or in connection with the performance of the public officer's functions or exercise of the public officer's powers; or*
- (iv) a misuse of public resources in connection with the performance of the public officer's functions or the exercise of the public officer's powers; or*
- (b) conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer –*
- but does not include conduct, or an attempt to engage in conduct, by a public officer in connection with a proceeding in Parliament.*
- [14] The alleged conduct of Mr Brooks was identified in the assessment as being allegations of misconduct as set out above in sub-paragraphs (a)(i) (breach of the Ministerial Code of Conduct), (a)(ii), (a)(iii), of the definition of misconduct in the *IC Act*.
- [15] In accepting the matter for investigation, the Commission considered the misconduct exclusion for members of Parliament where the alleged conduct is 'in connection with a proceeding in Parliament'. A 'proceeding in Parliament' is defined in the *IC Act* as:
- all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House of Parliament or of a committee, and, without limiting the generality of the foregoing, includes –*
- (a) the giving of evidence before a House or a committee, and evidence so given; and*
- (b) the presentation or submission of a document to a House or a committee; and*

² Attachment 1.

³ Attachment 2.

(c) the preparation of a document for purposes of or incidental to the transacting of any such business; and

(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

- [16] The definition of 'proceeding in Parliament' is broad, and the Commission must make a decision on whether it has jurisdiction over the alleged conduct of members of parliament on a case-by-case basis.
- [17] In this case, the Commission determined that most of the conduct as alleged was not committed in connection with a proceeding in Parliament. The Commission therefore determined that it had jurisdiction in this matter.
- [18] The Commission considered Mr Brooks' compliance with his obligations under the *Parliamentary (Disclosure of Interests) Act 1996* (Disclosure of Interests Act) to be a proceeding of parliament and has not investigated this issue. It should be noted that as part of its functions the Commission monitors the operation of the parliamentary disclosure of interests register pursuant to s 30(a) of the *IC Act*.

2.2. Assessment process

- [19] Following initial review, the complaint was accepted for assessment by the Commission pursuant to s 35(1)(b) of the *IC Act*, and an assessor was appointed on 22 June 2016.
- [20] Relevant information and documentation regarding the Government's response to the conflict of interest issues involving Mr Brooks in 2016 was obtained and analysed.
- [21] The allegations against the Premier that were assessed were that he:
- i. failed to properly manage Mr Brooks' conflict of interest when he was Parliamentary Secretary for Small Business and Trade, and subsequently Minister for Mining; and
 - ii. facilitated a purposefully inadequate response to Mr Brooks' MSS's email-related conflict of interest issues.
- [22] The assessment identified no evidence of misconduct in the allegations involving the Premier. Although it is reasonable to observe that the management of, and the response to, the issues before and after 10 June 2016 did not progress as the Premier might have anticipated, there is no evidence that his response was improper or purposefully inadequate.
- [23] Deliberate, detailed and documented steps were taken by the Premier, following advice from relevant senior State Service officers, to address Mr Brooks' conflict of interest issues. These steps were planned and documented in the form of a protocol prior to and on the day of Mr Brooks' Ministerial appointment. The Premier received written undertakings from Mr Brooks to comply with these steps as well as the Ministerial Code of Conduct. These matters are discussed in more depth later in this report.

- [24] The Premier's response to the conflict of interest issues after 10 June 2016 did not lead to a resolution of the issues; however no evidence was identified in the assessment to suggest that it was intended to avoid such resolution. Rather, the evidence suggests that the Premier's intention was to manage and respond to the issues effectively. This is also discussed in more depth later in this report.
- [25] The misconduct allegations involving Mr Brooks were not resolved in the assessment. Further inquiries were required to deal with these allegations. On that basis the Assessment Report, dated 8 November 2016 recommended that the complaint be investigated in accordance with s 37(2)(g) of the *IC Act*.

2.3. Investigation process

- [26] In accordance with s 38(2) of the *IC Act*, the Premier was advised by written notice of the determination to conduct an investigation on 24 November 2016. The Notice was made subject to the confidentiality requirements of s 98 of the *IC Act*.
- [27] An investigator was appointed, in accordance with Part 6 of the *IC Act*, on 8 November 2016.
- [28] The Commission understood that the email audit by the Crown Solicitor may still have proceeded,⁴ and the Commission was experiencing some resourcing constraints due to acting requirements, so consequently this investigation was prioritised behind other assessments and investigations. This led to any progress on this matter being delayed until July 2017.
- [29] Mr Brooks was notified under notice of the investigation in November 2017. The election campaign delayed the date that Mr Brooks was available for interview. The procedural fairness response time further protracted the investigation, with the draft report being provided to Mr Brooks' legal representatives on 28 June 2018 and a response not received until 5 September 2018.
- [30] The investigation has involved the use of coercive powers, under s 47(1)(c) of the *IC Act*, to obtain: the DPAC emails sent to and received by Mr Brooks; Mr Brooks' returns under the *Disclosure of Interests Act* that were within the scope of the investigation; Mr Brooks' MSS emails and other MSS documents whilst he was a Minister; and other relevant records and information.
- [31] A coercive interview was conducted with Mr Brooks under s 47(1)(a) of the *IC Act*. Mr Brooks chose to also provide a statutory declaration addressing the misconduct allegations listed in the schedule of his notice to attend and give evidence.
- [32] Information and evidence was sourced without the use of coercive powers and from open sources. The investigator sought the advice of the Independent Broad-based Anti-corruption Commission in relation to some information technology matters.
- [33] The production of emails sent and received by Mr Brooks using his MSS email account when in Cabinet has been important to this investigation. Liaison with MSS and its legal representative led to an agreement that emails that contained only private domestic communications between Mr Brooks and his now ex-wife, Melissa

⁴ This is discussed in more depth later in this report.

Brooks, and that contained no communications or information relevant to the operation of MSS, were to be removed by MSS prior to production. It was agreed that such emails were outside the scope of the investigation.

- [34] Consequently 125 of these emails, made up of 53 email chains, were removed by the director of MSS, Justin Crawford, prior to production as they involved private domestic communications only.⁵ However, 15,178 emails sent from and received into Mr Brooks' MSS email account while he was a Minister were produced. This included unsolicited spam mail.
- [35] The investigator is satisfied that MSS has complied with the terms of the notice, and all required emails from the relevant period, including deleted items, were produced.
- [36] As is usual in Commission investigations, as the investigation has progressed new evidence has emerged and the allegations have been revised and refined.

2.4. Standard of proof

- [37] The standard of proof applied in this report to factual findings is the civil standard i.e. 'on the balance of probabilities'. This requires only 'reasonable satisfaction', as opposed to 'satisfaction beyond reasonable doubt' (as is required in criminal matters).
- [38] In considering whether the civil standard of proof has been met, an investigator will bear in mind what was said in *Briginshaw v Briginshaw*:

*Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*⁶

2.5. Procedural fairness

- [39] In accordance with s 46(1)(c) of the *IC Act*, the investigator 'must observe the rules of procedural fairness' in undertaking the investigation.
- [40] This report contains factual findings. Where factual findings might be considered to be adverse, they have been provided to the affected individuals for comment prior to finalisation of the report.
- [41] Mr Brooks was the only person afforded procedural fairness under s 46(1)(c). His legal representatives were provided with a draft investigator's report, the transcript of his interview and a copy of the attachments referenced in the draft report. These were distributed on 28 June 2018. A response was received from Bill Ayliffe SC, on behalf of Mr Brooks, on 5 September 2018.

⁵ Email from Justin Crawford, 26 February 2018.

⁶ (1938) 60 CLR 336, 362 (Dixon J).

- [42] As a result, paragraphs 178, 209, 221–224, 246, 249, 250, 271, 294, 296, and 298–302 of the draft report were changed or added, and one finding at pg 51 and two findings at pg 68 were amended.
- [43] Further procedural fairness was provided to both Mr Brooks and the Premier (as the principal officer of Mr Brooks) by the CEO of the Commission under s 56(1) of the *IC Act*. This enables the CEO to obtain submissions on any recommendations he may be intending to make to the Board of the Commission, including for any action(s) the Board might take in determining the matter, and whether a report should be tabled in Parliament. Both Mr Brooks and the Premier provided submissions and these were included with the CEO's report to the Board in accordance with s 57(1)(b) of the *IC Act*.

3. The investigation

3.1. Relevant policies and procedures

- [44] Members of Parliament are required to make a Primary Return of their interests within three months of entering Parliament.⁷ They are then required to provide an Ordinary Return on or before every October of each year.⁸ These returns must be made in an approved form and are then tabled in Parliament. As such, these returns are proceedings of Parliament, and Mr Brooks' compliance with the Disclosure of Interests Act is outside of the jurisdiction of this investigation.
- [45] In 2011, the Commission prepared a report that recommended the Government adopt codes of conduct that provide for members of Parliament, Ministers and for Ministerial staff, and that such codes be tabled in Parliament.⁹
- [46] A Code of Conduct for Ministers was adopted by the then newly elected Government on 1 April 2014 and has been operational from that date. The Code requires Ministers to address conflict of interest issues in a particular manner.
- [47] A revised Code of Conduct for Ministers has been endorsed by the Premier in March 2018. The revised Code is not applicable to this investigation as all allegations pre-date it.

3.2. Code of Conduct for Ministers: Functions of Ministers

- [48] Ministers have statutory and non-statutory functions. Their non-statutory functions – forming the decision-making group in government, directing policy and government decisions, discussing matters of significance and presenting bills – mean they have great responsibility and the capacity to impact the state and its citizens. It is obvious that such significant functions are incompatible with dishonest or improper conduct.
- [49] The Premier's Foreword in the Code of Conduct for Ministers makes it clear that Ministers must act with integrity: '*as a Government, we commit to uphold the highest*

⁷ *Disclosure of Interests Act* s 4.

⁸ *Disclosure of Interests Act* s 5.

⁹ Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff*, June 2011.

standards of public office and to act honestly, professionally and with accountability in the performance of our duties'.¹⁰

- [50] The Preamble to the Code of Conduct for Ministers acknowledges the significant functions and powers of Ministers, and reinforces the need for integrity:

Ministers are expected to behave according to the highest ethical standards in the performance of their duties as they hold a position of trust, and have a great deal of discretionary power which can have a significant impact on citizens of Tasmania. Therefore Ministers must commit themselves to the highest ethical standards to maintain and strengthen the democratic traditions of our State and its institutions. ... Ministers must not only act lawfully but also in a manner which withstands the closest public scrutiny.¹¹

- [51] The Preamble recognises the convention of collective responsibility for Government decisions, and obliges Ministers to report any Code of Conduct for Ministers non-compliance by themselves or by another Minister to the Premier.

3.3. Code of Conduct for Ministers: material conflict of interest

- [52] Of particular note in the Code are references to 'material conflicts of interest'. These should be considered as central to the allegations of whether Mr Brooks had an ongoing involvement in the operations and management of his relevant business interests while he was a Minister.

- [53] The Code requires that:

Any material conflict between a Member's private interest and his or her official duties which arises must be resolved promptly in favour of the public interest. So as to protect and uphold the public interest, Ministers must take reasonable steps to avoid, resolve or disclose any material conflict of interest, financial or non-financial, that arises or is likely to arise, between their personal interests and their official duties. Ministers must declare any such conflict of interest in writing to the Premier as soon as possible after becoming aware of the conflict. Ministers are individually responsible for preventing conflicts of interest. A conflict of interest does not exist where the Minister or a close relative is affected only as a member of the public or of a broad class of persons.¹²

- [54] What may constitute a 'material interest' is not outlined in the Code. A definition has been provided in the Guidance Notes provided in association with the Code:

Ministers have a duty to disclose and resolve material conflicts of interest. Generally a private interest can only create a conflict with official duties if it is material.

A material conflict of interest exists when a Minister in carrying out his or her official duties, is or reasonably appears to be, improperly influenced by private interests or when an official decision of the Minister could improperly advantage the Minister personally, or a close relative, especially, but not only, in a financial sense.

¹⁰ Code of Conduct for Ministers, pg 1.

¹¹ Ibid, pg 2.

¹² Ibid, pg 3.

A material conflict of interest is one that is significant or important or one which a reasonable person would think is important to the Minister's official duties or to a decision to be made by the Minister. A Minister must think about and declare any facts or interests that a reasonable person in the same or similar circumstances would be expected to know to be relevant to the issues at hand or to a decision to be made.

This means the interest must:

be a real or substantial interest, not theoretical, remote, contingent or otherwise insubstantial; and

have (or reasonably appear to have) the capacity to influence the conduct of a Minister, whether or not it actually has or will do so.

A Minister should ask him or herself what an ordinary reasonable person would do or think in the same or similar circumstances. A material interest may arise if, as a result of a Minister's action or decision, the Minister, a close relative or a dependent person will or is likely to suffer a detriment or receive a benefit.

A conflict of interest does not only encompass actual or direct conflicts of interest between a Minister's official duty and private interests. A potential or perceived conflict of interest may also constitute a material conflict of interest.

Private interests of a Minister may include not only a Minister's financial or other interests but the financial or other interests of the Minister's close relatives.

There are many circumstances in the context of the Minister's position in which conflicts of interest may arise. For example, a conflict may arise where a Minister:

has a significant financial interest in a company with whom the Government is contracting; or

has a personal interest in the outcome of a Government process (eg the granting of a licence).¹³

[55] It has been necessary to consider whether Mr Brooks' interests and interaction with MSS has amounted to a 'material' conflict of interest.

[56] It is recognised that there are differing views and perceptions on what might amount to a particular type of conflict of interest, including a material conflict of interest. Given the definition of a material conflict of interest in the guidance notes,¹⁴ it is appropriate that this investigation consider the evidence within the terms of that definition.

¹³ Code of Conduct for Ministers Guidance Notes, pp 2-3.

¹⁴ Ibid.

3.4. Persons named in this report or interviewed

Name	Position
Scott Bacon MP	Opposition MP
Rod Bramich	Mr Brooks' independent agent
Adam Brooks MP	Member for Braddon; former Minister for: Mining; Racing; and Building and Construction; designated public officer
Melissa Brooks	Mr Brooks' former wife
Justin Crawford	Director and Chief Financial Officer of MSS; Mr Brooks' Business Manager
Kim Evans	Secretary, Department of State Growth
Bryan Green	Complainant; former Leader of the Opposition
The Hon Will Hodgman MP	Premier
Greg Johannes	Former Secretary, Department of Premier and Cabinet
Bruce McTaggart SC	Mr Brooks' legal representative regarding Mr Morgan's audit
Alan Morgan	Crown Solicitor of Tasmania
Andrew Nourse	Operations Manager, MSS
Michael O'Farrell SC	Solicitor-General
Simon Overland	Former Secretary, Department of Justice
Bob Rutherford	Deputy Secretary, Department of State Growth
Timothy Williams	Mr Brooks' legal representative regarding Mr Morgan's audit

PART B – Evidence

4. Mr Brooks' business interests

4.1. Pre-Parliament

[57] Prior to entering Parliament, Mr Brooks had a number of business, company and other pecuniary interests. This included a directorship and being sole shareholder of MSS.¹⁵

[58] MSS was founded by Mr Brooks in 2004.¹⁶ Its focus was to provide support for Systems Applications Products software.¹⁷ Mr Brooks said,

*MSS was originally designed ... or started, because no one was offering support within SAP and within asset management, they were more or less bringing two different people, whereas my idea was that we could provide a service, or the company could provide a service to that. So that was the concept in 2004 when I started MSS on my own, as a single entity and as a single business idea I had, and I thought this might work.*¹⁸

[59] Mr Brooks has not publicly shied away from his personal history in mining and MSS's mining association. His now deregistered website said:

*... Adam went on to work extensively in the mining industry, experiencing life in small and remote communities. In 2004, he established Maintenance Systems Solutions (MSS), which has over 200 employees and consults on Asset Management and Maintenance, nationally and internationally to a diverse range of industries including the mining sector.*¹⁹

[60] Despite the above, and although MSS provides services to the mining sector as well as other sectors and industries, Mr Brooks has consistently maintained that MSS is not a mining company and that any perception of conflict of interest is not aligned with the reality of the situation:

*... MSS is not a mining company. It never has been. It never was. It's never held a mining lease or an exploration permit or a mining permit in not only Tasmania, or across Australia, but anywhere in the world. It's not a mining company at all, and therefore, when you look at what the company actually does, which is, effectively, asset management support and software support for a multitude of industries, there is, in my opinion, once people are appraised of those circumstances of what the company does, there can be no way there is ... an actual material conflict of interest or even perceived conflict of interest once those considerations are made.*²⁰

¹⁵ Attachment 3.

¹⁶ Attachment 4.

¹⁷ Transcript interview with Adam Brooks MP, pg 14.

¹⁸ Ibid, pp 14-15.

¹⁹ Attachment 5.

²⁰ Transcript interview with Adam Brooks MP, pp 17–18.

4.2. During Opposition (2010-2014)

- [61] Mr Brooks was elected to the House of Assembly to represent the electorate of Braddon in March 2010. He was an opposition MP from 2010 until March 2014.
- [62] When elected to Parliament, he disclosed his interests in his primary return under s 4 of the Disclosure of Interests Act as required.²¹
- [63] Mr Brooks disclosed his sources of income as being Chairman of MSS, being Managing Director of Total Performance Sports Pty Ltd and being an MP.²²
- [64] He did not disclose any sources of income from a trust.²³
- [65] He disclosed rental incomes from investment properties in Tasmania and interstate. He was a co-owner in these investment properties with his then wife.²⁴
- [66] He disclosed his real property interests: four properties in Tasmania (including his primary residence), and three properties interstate.²⁵
- [67] Mr Brooks disclosed a number of interests in corporations in which he had an interest, including – as he was obliged to do – the nature of his interest, a description of any position he held and a description of the principal object of the corporation. His disclosure at this time of his entry to parliament was as follows:

Corporation	Nature of interest	Position	Principal object of corporation
A & M Brooks Super Pty Ltd	Shareholder	Director & Secretary	Trustee of Superannuation Fund
A & M (Aust) Pty Ltd	Shareholder	Director & Secretary	Trustee of Discretionary trust
Australian Facilities Maintenance Services Pty Ltd	Shareholder	Director	Not active
Australian Project Management & Constructions Pty Ltd	Shareholder	Director & Secretary	Not active
B & B (Aust) Pty Ltd	Shareholder	Director & Secretary	Trustee of unit trust
Jem Publishing Pty Ltd	Shareholder	Director	Publishing
More Than Mobiles Pty Ltd	Shareholder	Director & Secretary	Mobile phone retailer

²¹ Attachment 6.

²² Ibid, pg 2.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid, pg 3.

Corporation	Nature of interest	Position	Principal object of corporation
Total Performance Sports Pty Ltd	Shareholder	Managing Director & Secretary	Sporting goods retailer
Maintenance Systems Solutions Pty Ltd	Shareholder	Director (Chairman) & Secretary	Maintenance Management Contracting, Consulting & Training
Canada Maintenance Systems Solutions Pty Ltd	Shareholder	Director	Maintenance Management Contracting, Consulting & Training
Maintenance Systems Solutions Ltd (UK)	Shareholder	Director	Maintenance Management Contracting, Consulting & Training
MCS & Training INC (USA)	Shareholder	President, Director & Secretary	Maintenance Management Contracting, Consulting & Training
Maintenance Systems Solutions (NZ) Pty Ltd	Shareholder	Director	Maintenance Management Contracting, Consulting & Training

- [68] Mr Brooks disclosed a debt he was liable to pay to MSS.²⁶
- [69] As a discretionary disclosure, he disclosed a 5% interest in a particular racehorse but did not anticipate any income from that interest in the period return. He declared '*this particularly as Shadow Minister for Racing*'.²⁷
- [70] Mr Brooks was appointed as the Opposition's Spokesperson for Mining in 2012. The then Labor Government raised conflict of interest concerns in relation to that appointment. Mr Brooks gave evidence that although he saw the issues raised by the Government as little more than political opportunism, he still took steps to address conflict of interest concerns by ensuring there was no connection between MSS and mining operations in Tasmania:

... if I take you back to around about 2012, when we were in opposition, and again I'm not a hundred percent sure of the actual dates or the years, but I was appointed the shadow Minister for Mining. And at the time, there was political argument and media argument around a so-called conflict of interest by the opposition.²⁸ In my opinion it was a political argument, and that was addressed by me ensuring ... the company didn't do any work in Tasmania at that time. Now ... it's a matter of public record, there's media articles about all of that, and it was to address a political issue. It was

²⁶ Ibid, pg 7.

²⁷ Ibid.

²⁸ For clarity, Mr Brooks' use of the word 'opposition' in this particular context is a reference to the 'opposition' party to the Liberal Party i.e. the Labor Party, which was in Government in 2012.

*never ... a real, in my opinion, and certainly from the advice I ... think I even received at that time, it was never a real belief that there was an actual or perceived conflict of interest, it was to me it was a ... more of an opportunity for the opposition.*²⁹

- [71] While an Opposition MP and later a Parliamentary Secretary in the Hodgman Government, Mr Brooks was required to make Ordinary Returns of his interests under s 5 of the *Disclosure of Interests Act*. This occurred as required from 2011–2017.
- [72] Mr Brooks gave evidence that once he was elected to Parliament, he moved away from an active role in MSS to concentrate on being an MP while retaining the position of sole director:

*So it would be fair to say that certainly at the start, but I had withdrawn significantly from that interaction within the company, even probably around the time of my election onwards, and that was more based to, not due to a material conflict of interest or even a so-called perceived conflict of interest, it was due to more time constraints and I was focussed on representing the community and delivering for the community. So whilst I – there were some employees there that knew me, that I had employed personally when I was the director, or some have been there for over ten years, well before I was even elected to parliament, so it would be suffice to say that, yeah, I wouldn't say I was the face of the company by then more or less because I'd withdrawn from any real active role within the business. I was ... the director, but I certainly wasn't what I would say the face to probably the vast majority at least of employees, and many of them probably wouldn't have a clue who I was.*³⁰

4.3. Prior to becoming a Minister (March 2014 – February 2016)

- [73] Following the election of the Liberal Party Government in March 2014, the Hon Paul Harriss MP was appointed Minister for Resources and the Hon Jeremy Rockliff MP was appointed Minister for Racing. Mr Brooks was appointed Parliamentary Secretary for Small Business and Trade on 7 April 2014,³¹ and was not a member of Cabinet at this time.
- [74] The Code of Conduct for Ministers was introduced in April 2014; however – as a Parliamentary Secretary – Mr Brooks was not bound by any code of conduct.
- [75] Mr Brooks gave evidence that by February 2016 he had left responsibility for the day to day operations of MSS with senior managers:

*... prior to joining Cabinet ... I had complete faith in the general management of the company. That it was – my main responsibility was as the director and running the overall, I suppose, strategy and I suppose the – the structure of – what the company was doing, ultimately though I was, as the sole director, responsible and ... I was ultimately liable for whatever happened (at MSS).*³²

²⁹ Transcript interview with Adam Brooks MP, pp 30–31.

³⁰ Ibid, pg 18.

³¹ Attachment 7.

³² Transcript interview with Adam Brooks MP, pp 17–18.

4.4. Appointment to Cabinet in February 2016

- [76] On 17 February 2016, Mr Harriss' retirement from Parliament was announced.³³ This prompted a Cabinet reshuffle.
- [77] On 18 February 2016, Mr Brooks was formally appointed Minister for Mining, Minister for Racing, and Minister for Building and Construction (a newly established portfolio).³⁴
- [78] The Premier issued a media statement that day about the changes to Cabinet. The Premier referenced Mr Brooks' previous experience working with the mining sector, saying that Mr Brooks,

*has long been a champion for Tasmania's North-West and West Coast, has practical experience in the mining industry and understands the workers and families it supports. This makes him ideally placed to deal with the mining sector through the challenges the current markets present ... One of the strengths of both the Liberal Party and this Government is that we have a Parliamentary team made up of members from all walks of life and business. In this regard, it is well known Adam has a number of business interests related to the mining sector.*³⁵

- [79] The media statement publicly acknowledged that Mr Brooks' business interests may prompt conflict of interest concerns and outlined a response to these:

[Mr Brooks] has agreed to divest himself as soon as practicable of any interests which may give rise to a real or perceived conflict of interest. He has already taken steps to resign directorships of companies with which he is involved and has removed himself from any operational involvement with those companies and their administration immediately.

...

*I have sought the advice of the Secretary of the Department of Premier and Cabinet, Greg Johannes, on these matters and as a result a protocol has been developed in consultation with the Solicitor General and other Heads of Agency to manage any possible conflicts of interest. In the interest of full transparency and public probity I am today releasing the six-point protocol and correspondence to Adam outlining my expectations.*³⁶

- [80] Mr Brooks gave evidence that, prior to the offer to join Cabinet, he had not considered divesting MSS. He recalled the offer of the Ministerial appointment from the Premier on 17 February 2016 and being afforded a short period of time on that morning to make a decision based on what the Premier expected from him:

I was informed that a condition of me going into Cabinet was selling MSS. I believe I probably turned green when I was told that, and I was told to go away and think about it for an hour and to come back with a decision ...

³³ Attachment 8.

³⁴ Attachment 1.

³⁵ Attachment 9.

³⁶ Ibid.

...

so I was given basically an ultimatum: the condition of me going to Cabinet was I get rid of MSS, and I went away and ... I probably swore because I ... had to process it, I had to make a decision on whether or not – and I thought well, look, I'll go back and try and request if there was another way. And it was put to me that my choice was: go into Cabinet, sell MSS; or go away and we'll get Guy up here, as in Guy Barnett. That was the decision I had to make.

...

And that was the decision I made and I absolutely committed to that decision once it was made ... Mr Crawford told me I was mad. He said: "why would you do that?" Now, I may have had differing views of fairness or not or whether – whether it was even reasonable, but at the end of the day, I had to make a decision and I put my life and soul into being a member of a parliament and representing the community. Yeah, MSS was important to me, but I was privileged that I'd done pretty well out of it and – and I wanted to be a part of the Cabinet of the government and I would do what I was asked for that and that was the decision that I made on that day, and I absolutely remained committed to it and I probably hadn't gone through ... every single practical actual issue of this transition from that decision, that ... I'd only just made.

...

It was a big call and a big decision. Like, I've probably never spoken about other than to those at the time that I sought some counsel on, and they all told me not to do it because it was, in their opinion, a ridiculous proposition for something that didn't exist in the first place. But I absolutely committed to it and I had no problem with it once the decision had been made, and that didn't envisage, of course, the problems with it ... that flowed.³⁷

- [81] Mr Brooks did not have the option of declining the mining portfolio offer while accepting the other portfolios. To join Cabinet, Mr Brooks understood that it was necessary for him to accept the mining portfolio and to sell MSS.³⁸

4.5. Mr Brooks' initial undertakings to the Premier

- [82] In accepting his offer to become a member of Cabinet, Mr Brooks advised the Premier in a letter dated 17 February 2016, '*of a potential conflict of interest owing to my personal investments in businesses that are directly or indirectly associated with the portfolios to which you propose I be appointed*'.³⁹
- [83] In this letter, Mr Brooks agreed to abide by the Code of Conduct for Ministers, to disclose his interests, and to set out the steps he intended to take to resolve any conflicts of interest. The Code of Conduct for Ministers prescribed Mr Brooks'

³⁷ Transcript interview with Adam Brooks MP, pp 116–118.

³⁸ Ibid, pp 119–120.

³⁹ Attachment 10.

obligations regarding conflicts of interest, declarations and divestment of personal interests, shareholdings, directorships and other forms of employment.⁴⁰

- [84] The Code required Mr Brooks to take reasonable steps to avoid, resolve or disclose any conflicts of interest and to make adequate disclosure to the Premier of all financial and other interests that he was obliged to disclose under the *Disclosure of Interests Act*.⁴¹
- [85] In his letter to the Premier of 17 February 2016, Mr Brooks provided an outline of the action he intended to take to deal with the interests, and attached a statement of his business and personal interests, as outlined below.⁴²

Business	Structure	Function	Interest	Action to be taken
Maintenance Systems Solutions Pty Ltd	Private company limited by shares	Asset management and consulting services	100% ownership; Secretary & Director	Resign as Secretary & Director; divest ownership as soon as practicable
Maintenance Systems Solutions NZ Limited	Private company limited by shares	Asset management and consulting services (does not operate in Australia)	100% ownership; Director	Resign as Director; divest ownership as soon as practicable
Maintenance Consulting Professionals Inc.	Private company limited by shares	Asset management and consulting services (does not operate in Australia)	No current interest	Divest if interest arises
Sharproc Pty Ltd	Private company limited by shares; owned by Maintenance Systems Solutions Pty Ltd	Dormant business		

⁴⁰ Code of Conduct for Ministers.

⁴¹ Ibid, pg 3.

⁴² Attachment 10.

Business	Structure	Function	Interest	Action to be taken
Adam Brooks Group Pty Ltd* currently being re-registered	Private company limited by shares	Shelf company – no material assets	No current interest	Divest if interest arises
LAD Developments Pty Ltd	Private company limited by shares	Trustee – LAD Developments (Tas) Unit Trust	No current interest	Divest if interest arises
A & M Brooks Super Pty Ltd	Private company limited by shares	Trustee – Brooks Superannuation Fund	50% ownership; Director	Resign as Director
Brooks Investment Group Pty Ltd	Trustee, Brooks Family Trust; Private company limited by shares	Trustee of Brooks Family Trust	No current interest	Divest if interest arises
Brooks Development Group Pty Ltd	Private company limited by shares; owned by Brooks Investment Group	Property holdings	No current interest	Divest if interest arises
Rapid Fleet Management Pty Ltd	Private company limited by shares; owned by Brooks Investment Group	Plant and Equipment provider	No current interest	Divest if interest arises
Xcel Fitness Shearwater Pty Ltd	Private company limited by shares; owned by Brooks Investment Group	In process of being wound up	No current interest	Divest if interest arises
Adam Brooks Group Corporate Services Pty Ltd	Private company limited by shares; owned by	Corporate Services	No current interest	Divest if interest arises

Business	Structure	Function	Interest	Action to be taken
	Brooks Investment Group			
Moo Investments Pty Ltd	Private company limited by shares; owned by Brooks Investment Group	Property holdings	No current interest	Divest if interest arises
Total Performance Sports Pty Ltd	Private company limited by shares; owned by Brooks Investment Group	Sporting retail outlet	No current interest	
Brooks Family Trust	Discretionary Trust	Family Trust	Identified beneficiary, but receives no benefits	
LAD Developments Unit Trust	Unit Trust	Property holding	Brooks Investment Group Pty Ltd is a unit holder	
Moo Investment Unit Trust	Unit Trust	Property holding	Brooks Investment Group Pty Ltd is a unit holder	
Other shareholdings: <ul style="list-style-type: none"> • Port Sorell District Community Bank Branch • Medibank Private • Pacific Brands • Astaricks Group Pty Ltd (shares owned by Brooks Investment Group) 				

[86] Based on his proposed actions, Mr Brooks' MSS-related interests were the main issue that generated conflict of interest concerns in relation to the mining portfolio.

[87] Mr Brooks undertook to resign as director of MSS, and to divest his interests in MSS and its associated entities, including the overseas companies Maintenance Systems Solutions NZ Ltd and Maintenance Consulting Professionals Inc.

- [88] Mr Brooks gave evidence that he understood 'divest' to mean 'sell'.⁴³
- [89] Mr Brooks confirmed to the Premier that: prior to resigning as director, he had renewed a direction (previously made when he was opposition Mining Spokesperson: 70]) that MSS was not to undertake any activities associated with mining companies in Tasmania; one particular mining company that MSS engaged with did have interests in Tasmania and other states; and he had directed MSS not to renew its contract with that company after that contract ended in May 2016.⁴⁴
- [90] An email from an MSS employee to the relevant mining company dated 19 February 2016 has been produced which shows that Mr Brooks' direction on this matter was implemented.⁴⁵
- [91] Mr Brooks acknowledged to the Premier that as Mining Minister he might be asked to make decisions that could affect the regulatory environment that these businesses operated within, and welcomed the Premier seeking the advice from the Secretary of DPAC and the Solicitor-General on a way to manage this situation.⁴⁶
- [92] In the meantime, acknowledging that divestment was likely to be a lengthy and complicated process,⁴⁷ Mr Brooks undertook to the Premier to put in place interim arrangements i.e. that he would resign as a director of all of the listed companies, take no role in the management of the businesses, appoint a manager to manage the businesses until divested and appoint an independent agent to deal with the manager on his behalf.⁴⁸

5. The Six-point Protocol to deal with Mr Brooks' conflicts of interest

5.1. Establishment of the Protocol

- [93] On the day of Mr Brooks' formal appointment to Cabinet (18 February 2016), a six-step protocol titled *Protocol for Managing Possible Conflicts of Interest – Minister for Mining, Minister for Racing and Minister for Building and Construction* ('the Protocol') was signed by the then Secretary of DPAC, Mr Johannes.⁴⁹
- [94] The Protocol was developed with input from Mr Johannes, the Secretary of the Department of State Growth (Kim Evans), then Secretary of the Department of Justice (Simon Overland) and the Solicitor-General (Michael O'Farrell SC).⁵⁰
- [95] A Minute to the Premier dated 18 February 2016 from Mr Johannes recommended that the Premier:

⁴³ Transcript interview with Adam Brooks MP, pg 51.

⁴⁴ Attachment 10.

⁴⁵ Attachment 11.

⁴⁶ Attachment 10.

⁴⁷ Transcript interview with Adam Brooks MP, pg 42.

⁴⁸ Attachment 10.

⁴⁹ Attachment 12.

⁵⁰ Attachment 13.

- 1 *note my advice ... concerning appropriate arrangements to be put in place to manage any actual or perceived conflicts of interest which may arise as a result of Mr Adam Brooks' business interests and his proposed ministerial portfolios; and*
- 2 *sign the (attached) letter to Mr Brooks ... outlining your expectations of the processes that will be followed to manage such interests, including the attached protocol which summarises how the arrangements we recommend will operate.*⁵¹

[96] One of the issues raised in the Minute was that divestment of all interests which may give rise to an actual or perceived conflict of interest should occur as soon as practicable.

[97] Another issue raised in the Minute was:

While the process of divestment proceeds, Mr Brooks should also take immediate steps to resign from all directorships and ensure he exercises no influence over any operational decisions in his businesses. We note that he has committed to do this.

[98] Mr Johannes advised the Premier that by taking the steps outlined in the Protocol, *the Government will help minimise the chances that Mr Brooks is presented with a matter which may give rise to an actual or perceived conflict of interest discharging his ministerial responsibilities. However, irrespective of whether these steps have been followed, when the Minister is presented with a matter for his consideration ultimately it will be his responsibility to determine whether or not a conflict may arise to take the action necessary to prevent it as per the Code of Conduct which states "Ministers are individually responsible for preventing conflicts of interest".*

[99] The Minute was signed by the Premier on 21 February 2016.

[100] The Protocol included steps beyond those that Mr Brooks had already undertaken to take in his letter of 17 February 2016.⁵² The steps addressed the concerns and key issues raised in the Minute.

- Step 1 required Mr Brooks' immediate resignation from all directorships and for this to be confirmed in writing to the Premier.
- Step 2 required that Mr Brooks immediately appoint an independent manager of relevant businesses and an independent agent to deal with the manager on Mr Brooks' behalf until such time as all interests were divested. It stated that '*this should ensure the Minister has no involvement, in any form, formal or otherwise, in the management and operation of any of these businesses*'. This was also to be confirmed in writing to the Premier.
- Step 3 required the immediate commencement of divestment proceedings of all relevant businesses, and confirmation of the conclusion of these proceedings in writing to the Premier.
- Steps 4 and 5 provided for a process to manage a delegated decision-making authority where there is a possibility of a conflict.

⁵¹ Ibid.

⁵² Attachment 12.

- Step 6 outlined the implementation of a double surety arrangement.

[101] The Protocol was attached to an undated letter from the Premier to Mr Brooks ('the Premier's letter') stating that he agreed with the advice provided by the Secretary of DPAC about the key steps that the Premier should put in place to manage potential conflicts.⁵³

[102] The Premier's letter outlined the Premier's expectations of Mr Brooks regarding the processes contained in the Protocol. The Premier wrote that:

I agree that you should resign from all your directorships. You should also ensure that you exercise no influence over any operational decisions by appointing a manager of your businesses, and an independent agent to deal with the manager on your behalf, until such time as you have divested yourself of your interests in them. In practice this means you should take steps immediately to ensure you have no involvement, in any form, formal or otherwise, in the management and operation of any of these businesses. Again, I require you to confirm with me, in writing, when this has occurred.

[103] The Premier reinforced the message that 'Ministers are individually responsible for preventing conflicts of interest' and that Mr Brooks must take such additional precautions that he believes to be necessary to prevent conflicts of interest, and that he should stringently adhere to all aspects of the Code of Conduct for Ministers.

[104] The intended outcome of Step 2 of the Protocol was specified in the Protocol itself i.e. that the Minister would have no involvement, in any form, formal or otherwise, in the management and operation of any of the relevant businesses.⁵⁴

5.2. Mr Brooks' steps after agreeing to abide by the Protocol

[105] Mr Brooks resigned his directorship of MSS on 25 February 2016.⁵⁵

[106] In line with Step 2 of the Protocol, MSS's Chief Financial Officer (Justin Crawford) was appointed as Mr Brooks' business manager on 25 February 2016.⁵⁶ Mr Brooks gave evidence that Mr Crawford was most suitable for this role and expected Mr Crawford to manage his businesses in consultation with senior management.⁵⁷

[107] Rod Bramich – a Devonport-based business consultant – was appointed as Mr Brooks' independent agent and business advisor, in accordance with Step 2 of the Protocol. Mr Bramich wrote to Mr Brooks outlining his understanding of what was required of him:

I will liaise with your Business Manager/Directors and will provide advice as required on a day to day basis, as well as managing the divestment of your assets and businesses as agreed.

⁵³ Attachment 14.

⁵⁴ Attachment 12.

⁵⁵ Attachment 3; Statutory Declaration by Adam Brooks MP, pg 2.

⁵⁶ Ibid.

⁵⁷ Transcript interview with Adam Brooks MP, pg 62

I understand that you will not be involved in any operational matters of your business interests and therefore I am to liaise with you on financial reporting as required and any divestment matters.

The arrangement will commence immediately and can be terminated with one months' notice.⁵⁸

- [108] Mr Bramich produced to the Commission all records relating to his role as Mr Brooks' independent agent. The only records were his letter of acceptance to Mr Brooks and three invoices.⁵⁹

- [109] Mr Bramich advised that,

The arrangement was on a retainer basis ... I met with Justin Crawford and it was clear that the businesses ran themselves and on that basis, and at that point in time, there was no need for my involvement. Further, any potential divestment of any business interests was subject to Adam Brooks' marriage settlement. ... I did not keep records of any meetings with Justin (given the straightforward nature of the outcome) or the timing of these meetings.⁶⁰

- [110] Mr Brooks explained his understanding that his independent agent's main role was to manage Mr Brooks' divestment of MSS:

So he was predominately there to manage the divestment process, he was there also to assist in the management of MSS but from what I understand, MSS effectively manages itself with its current management structure, including Mr Crawford being known as the director, so it was more or less to handle the divestment process, ... was the key part of his role.

Q: ... What did managing the divestment process entail for Mr Bramich?

A: *So it would have been, effectively, to work through the process of divestment, like Mr Bramich ... has experience as a business consultant and a business coach. He's certainly well regarded in the profession, and I had to find someone to handle the divestment process so that I wasn't, as part of the agreement, handling the divestment of it. So, again, and what I understand is, Mr Bramich met with Mr Crawford, ... were working on it, but I know, from what I understand, there were also some challenges that they'd identified around the matrimonial issues, and Mr Bramich made me aware of that, so – not immediately but into – into the progression of the process.⁶¹*

- [111] Mr Brooks also outlined how Mr Crawford and Mr Bramich were expected to work together to allow him to manage the conflict of interest concerns:

... the intention was for Mr Bramich and Mr Crawford to manage operational stuff with MSS and also the divestment process, again, from my understanding, it was identified that Mr Bramich didn't feel he needed to be involved in MSS because it ran itself.

⁵⁸ Attachment 15.

⁵⁹ Attachment 16.

⁶⁰ Email from Mr Bramich, 5 March 2018.

⁶¹ Transcript interview with Adam Brooks MP, pg 63.

...

*Or it didn't – wasn't warranted, mainly because of the ... functional operational requirements of the business were interstate, and ... with Mr Crawford assuming directorship control and also Mr Nourse as the Operations Manager of the company, ... you know Mr Bramich was there, if required, but I think they'd determined that the predominant focus was divestment which was part of the agreement.*⁶²

- [112] MSS minutes of the meetings of the MSS Operational Leadership Team show that Mr Brooks did not attend any these meetings whilst he was in Cabinet.⁶³
- [113] Mr Crawford said that no formal meetings, either internal or external, were attended by Mr Brooks during the time he was a Minister. He met with Mr Brooks on 26 February, 30 April and 9 May 2016, to discuss the progress of business valuations and the financial implications of Mr Brooks' impending marital separation. As these were informal catch-ups, no minutes were taken.⁶⁴
- [114] Other than the email described in [67] and [87], there were no MSS documents produced or identified in relation to steps taken by MSS to address Mr Brooks' conflict of interest with his mining portfolio.⁶⁵
- [115] This is unsurprising as Mr Brooks, as he described earlier, had reduced his involvement in MSS and left the operations of MSS to senior management to concentrate on his duties as an MP.
- [116] Mr Brooks provided an update on the management of his conflict of interest to the Premier on 7 March 2016. He advised that he had resigned all of his directorships and that,

*I have also removed myself from all management and operational decisions of relevant businesses, by appointing a business manager and appointing an independent agent to deal with the business manager on my behalf. I have briefed my independent agent about the divestment of all interests that have the potential to create a conflict of interest or the perception of a conflict of interest, and the divestment process has been initiated.*⁶⁶

- [117] He advised that the Protocol was in operation and that he would continue to abide by the Ministerial Code of Conduct.
- [118] Mr Brooks again confirmed his management of his conflict of interest and his removal for any involvement in the operations and management of the relevant businesses to the Premier on 20 May 2016.⁶⁷ He advised the Premier that he had briefed his independent agent in February 2016 to commence the divestment process, that he had been advised that this had continued to advance, and that commercial-in-confidence discussions, as well as any associated due diligence, were being

⁶² Ibid.

⁶³ Minutes of MSS Operation Leadership Team meetings: 2 March, 1 April, 15 April, 29 April, 13 May, 27 May and 10 June 2016.

⁶⁴ Email from Mr Crawford, 24 January 2018.

⁶⁵ Ibid.

⁶⁶ Attachment 17.

⁶⁷ Attachment 18.

undertaken by several interested parties, all of which was being managed by his independent agent as part of the divestment process. He advised that divestment could take some time due to its complexity and the size of MSS, but it was being actioned as the priority of his independent agent.

6. The MSS email account

6.1. Mr Brooks' use of his MSS email account while a Minister

- [119] Mr Brooks continued to use his email account (arb@mss.com.au) throughout his time in Cabinet. Although conceding that it would have been better if he had closed this account when appointed to Cabinet⁶⁸, he rejected any assertion that the account reflected involvement in the management and operations of MSS:

*It still didn't involve me in the management and operations of the business. I used it for personal and personal finance, personal business, non-related business, of course not MSS-related operation and control, ... I used it for personal correspondence that I'd been using for over a decade, even prior to my entering parliament.*⁶⁹

- [120] As mentioned earlier, MSS produced 583 sent emails and 14,595 received emails from the arb@mss.com.au email address while Mr Brooks was a Minister. The emails produced included emails that had been deleted by Mr Brooks, spam and emails about non-business related private issues e.g. interpersonal, social, family, community, sporting and financial matters, and business related issues not involving relevant businesses e.g. Mr Brooks' Devonport sportswear business.
- [121] However, the produced emails also included those sent to and by Mr Brooks that did involve relevant businesses, particularly MSS. For the purposes of this investigation, the emails have been grouped into 18 different subject matters (D1-D19).⁷⁰ Copies of the emails of interest are referenced in this report,⁷¹ and addressed below.
- [122] Mr Brooks was provided with copies of the emails prior to his interview with the Commission. He provided an explanation of the context of each subject in his statutory declaration. An analysis of whether the emails are evidence of Mr Brooks abiding by the Premier's expectations on the management of his conflict of interest issues is contained in Part C of this report.
- [123] Mr Brooks believes that the emails do not reflect involvement contrary to the Premier's expectations.⁷² He said that an informed reader would, '*find that it absolutely proves that [the emails] are not management and control*'⁷³ of MSS.

⁶⁸ Transcript interview with Adam Brooks MP, pg 68.

⁶⁹ Ibid, pp 68–69.

⁷⁰ There is no email subject marked D5.

⁷¹ Attachment 19.

⁷² Transcript interview with Adam Brooks MP, pg 73; Statutory Declaration by Adam Brooks MP, pp 8–13.

⁷³ Transcript interview with Adam Brooks MP, pg 73.

6.2. Mr Brooks' answers to questions in Budget Estimates Committee (9 June 2016)

- [124] During Budget Estimates Committee on 9 June 2016, Mr Brooks was asked a question by Scott Bacon MP about his use of an email address associated with MSS. The MSS email address in question was arb@mss.com.au.

Mr Bacon - Do you have any day-to-day interactions with MSS?

Mr Brooks - No.

Mr Bacon - Do you use an MSS email address?

Mr Brooks - No.

Mr Bacon - You don't use an MSS email address?

Mr Brooks - No.

Mr Bacon - At all?

Mr Brooks - No.⁷⁴

- [125] Mr Brooks conferred with an adviser, who informed him that he may have answered Mr Bacon's questions incorrectly,⁷⁵ and Mr Brooks shortly after then told Parliament:

I would like to clarify something with you, Chair. There is still a valid or an activated email owned by the company that I do not use for anything other than personal use. I obviously need to make sure that is clear.⁷⁶

- [126] Mr Brooks said that the answers to Mr Bacon's questions resulted in 'a bit of a debacle'.⁷⁷ He said that he was not in the 'best frame of mind' that day due to concerns about family matters and did not hear the question properly, and that this influenced his confused answers.⁷⁸

- [127] Mr Brooks recognised immediately that his confused answers would lead to significant media interest: 'I've been in the political system long enough to know this is going to cause some colour and movement the next day'.⁷⁹ Media interest did eventuate on 9 June 2016 and the days that followed.

- [128] Mr Brooks gave evidence that after Budget Estimates had finished that day he did not have any meetings or conversations with Government colleagues or staff about his answers in Estimates.⁸⁰

⁷⁴ Hansard, House of Assembly Estimates Committee A, 9 June 2016.

⁷⁵ Transcript interview with Adam Brooks MP, pg 127.

⁷⁶ Hansard, House of Assembly Estimates Committee A, 9 June 2016.

⁷⁷ Transcript interview with Adam Brooks MP, pg 126.

⁷⁸ Ibid, pg 124.

⁷⁹ Ibid, pg 130.

⁸⁰ Ibid, pg 128.

6.3. Deletion of MSS emails (9–10 June 2016)

- [129] Mr Brooks accessed the email account arb@mss.com.au from his home late in the evening of 9 June 2016 and in the early hours of 10 June 2016.⁸¹
- [130] Mr Brooks collated a significant number of sent and received emails, including many that suggest his involvement in the management and operation of MSS, and his influence over, and his participation in, operational decisions. He forwarded them in a series of 'capturing' emails to another private email account (arb1@gmx.us).⁸² He then 'double-deleted' the original emails and the forwarded 'capturing' emails from arb@mss.com.au.
- [131] As a result of this, none of the above emails remained in the inbox, the sent folder or the deleted items folder of arb@mss.com.au. They were recovered by MSS for production under coercive notice from the Commission. This was carried out with assistance from Microsoft.⁸³
- [132] Copies of this email activity by Mr Brooks on 9-10 June 2016 are referenced in this report.⁸⁴
- [133] Mr Brooks gave evidence that his actions on that night were motivated by a concern to protect privacy. He disputed that the emails had been deleted or removed, because they were recoverable. He also rejected any suggestion that he intended for the emails to unrecoverable:

I relocated a certain amount of emails, which I absolutely knew would then be part of the log of correspondence. Given that I have a background in software and management ... and those sorts of things, I had no misunderstanding as to how these things are backed up. I effectively quarantined that correspondence and I also dispute the allegation given that ... the MSS backup system does not allow removal of emails..... I was the director, or certainly managing the business when I made the decisions to implement that system to ensure nothing could not be recovered or could not be ... retrieved from any time, from any account that was on that system.

...

As I've said, very, very concerned about the privacy of this correspondence. I effectively quarantined it by forwarding it to a separate address so that I could access it a lot more easily if required, but it was certainly a secure system ... different to that one. I knew that the server retained every email anyway and still has every email, that's the way it's actually designed and the way that it works. It ... was never in question that they would be removed, it was effectively, the way I saw it was a protection of my privacy until it was worked out what going to happen, because I didn't actually know.

...

⁸¹ Ibid, pg 129.

⁸² Attachment 20.

⁸³ Internal MSS email from Mr Cocker to Mr Crawford, 19 December 2017.

⁸⁴ Attachment 20.

*That was my primary concern and that was my thought process at the time, around making sure that information was kept confidential, because it was not for public disclosure and I think that's something I've been consistent with you as well when you've – when we were discussing this correspondence.*⁸⁵

- [134] Mr Brooks said that the deleted emails were not evidence of him engaging in improper behavior, as there was no material conflict of interest. He feared that his family's privacy was under threat and on that basis he deleted certain sent and received emails.⁸⁶

- [135] He gave evidence about his thinking, motivations and state of mind at the time of his activity on 9-10 June 2016:

*Yeah, it was more about my fear of walking in the next day, and still as a Minister of the Crown being required, and I didn't know what my obligations or rights around that were and that basically then having to be publicly disseminated, that was my fear at the time... I can absolutely guarantee you that was my motivation and my driving force in this stuff not being part of a public debate, given probably what I'd gone through, not only in Estimates but as part of the process around the ongoing media and opposition criticism, false criticism, of what I had and hadn't been involved in or not.*⁸⁷

- [136] Mr Brooks further outlined his thinking on the night of 9-10 June 2016 in his statutory declaration:

*Late in the evening of 9 June 2016 and early in the morning of 10 June 2016, following the conclusion of a hearing of the Estimates Committee where questions had been raised about my use of the MSS e-mail account, I was concerned that personal matters the subject of the use of this account, including matters surrounding my separation and divorce from my ex-wife, the financial status of my company, personal relationships, and my privacy might, as a consequence, fall into the public domain and be misinterpreted.*⁸⁸

- [137] He explained in his interview that he wished to protect what he saw as private communications until some sort of process had been established, and reiterated that the deletions did not render the emails unrecoverable:

*It meant, basically, if I was demanded that I handover that at the time, until there was due process around what are we actually talking about, I wanted to put a protection in place, which is what I did – it had nothing to do with deleting the stuff or hiding it from – it was always going to be there, it still is on the server, that's how you got it.*⁸⁹

⁸⁵ Transcript interview with Adam Brooks MP, pp 122–123, 129.

⁸⁶ Ibid.

⁸⁷ Ibid, pp 132–133.

⁸⁸ Statutory Declaration by Adam Brooks MP, pg 14.

⁸⁹ Transcript interview with Adam Brooks MP, pg 132.

- [138] Mr Brooks told no person, other than Mr Crawford, that he had captured, forwarded and deleted the emails:

Q: Did you tell the Premier that you'd forwarded and then deleted these emails from the account?

A: Not that I believe.

Q: What about anyone in the Premier's office?

A: No, I ... considered it to be a private matter and, again, ... it was nothing to do with – in regarding the allegation, it was nothing to do with trying to hide or remove this stuff because it was always on the system, so I was – to me... it was always going to be seen in the logs and then in the traffic logs, or the email logs, and therefore, it was not an issue, it was always going to be identified and recovered or provided to any system ... that was within the context of the information provided.

...

So I would doubt it, because it was never a concern, it was never an issue.⁹⁰

6.4. Advice to the Premier regarding Budget Estimates (10 June 2016)

- [139] Mr Brooks wrote a letter to the Premier explaining his confusion that resulted in his answers to Mr Bacon's questions.⁹¹ The letter was received at DPAC on 10 June 2016.
- [140] Mr Brooks advised the Premier that the divestment process was continuing, that this would take a period of time, and that the Protocol was operational in the interim.
- [141] Mr Brooks confirmed the information he had previously provided to the Premier (on 7 March and 20 May) about his resignation as director of relevant directorships. He said that, *'I have also removed myself from all management and operational decisions of relevant businesses, by appointing a business manager and appointing an independent agent to deal with the business manager on my behalf.'*
- [142] He advised the Premier that a 'filter system' had been put in place for the MSS email account to ensure any business related emails were not accessible or able to be seen by him.
- [143] Mr Brooks clarified in his interview that he saw the filter as being necessary to ensure no emails generating a material conflict of interest were accessible or seen by him:

It was more ... to do with someone sending me something that operationally could be in conflict with my ministerial duties and that's why someone else had oversight of that account as well, as I think is probably appropriate.⁹²

⁹⁰ Transcript interview with Adam Brooks MP, pg 143.

⁹¹ Attachment 21.

⁹² Transcript interview with Adam Brooks MP, pg 162.

[144] Information received as part of this investigation has indicated that this 'filter system' was manually operated, and involved Mr Crawford checking Mr Brooks' emails to filter out any business related emails.⁹³

[145] Mr Brooks gave evidence in his interview about the filter system. He explained that it had two elements. Firstly, his name was removed from the MSS global address list ('GAL'):

Removing me from the system so that I was effectively hidden, all of that email address was hidden from the company.

Q: And everybody within the company?

A: Yep, yep. Now obviously people knew it, they knew it, I'm not saying that it didn't still work because obviously it did, but it meant any employee couldn't just log into the GAL and find me and send it to me ...⁹⁴

[146] Mr Brooks explained the second element to the filter system that Mr Crawford had outlined to the investigator:

... so Mr Crawford had full access to my email log-in.

Q: So that was – and this is reading straight from the letter here, 'to ensure that any business related emails were not accessible or able to be seen by me'?

A: Yeah, yep, that was the intention of it.

Q: Is that how it worked in practice or reality?

A: Well look, I – from what I can tell. I don't believe that I saw anything that was in a material conflict of interest with my ministerial functions, which is what the intention of it was for, as well as the – I suppose the fact that it was able to be monitored by someone other than me that could make that determination as well. I don't believe – again if we look at where I've highlighted that I've removed myself from all management and operational decisions, irrelevant business in that same document that – again that I've done that.⁹⁵

[147] In his 10 June 2016 letter to the Premier, Mr Brooks reiterated that, since being a Minister, the account had only been used for personal and non-business correspondence, and discussions with Ms Brooks about financial and legal matters relating to their marital separation.⁹⁶ He did not advise the Premier of his email activity – including the deletions – undertaken the previous evening.

[148] Mr Brooks advised the Premier that, '*I believe the most appropriate way forward is for you to temporarily reassign my Ministerial responsibilities to another Minister while an independent audit of my email account is conducted*'. Mr Brooks made it clear in his interview with the Commission that the letter was not a letter of resignation.⁹⁷

⁹³ Meeting with Mr Crawford, 19 December 2017.

⁹⁴ Transcript interview with Adam Brooks MP, pg 161.

⁹⁵ Ibid, pp 161–162.

⁹⁶ Attachment 21.

⁹⁷ Transcript interview with Adam Brooks MP, pp 159–160.

- [149] Although he proposed the independent audit to the Premier in this letter, Mr Brooks could not recall whether it was his idea, or if it came from his ministerial office. Mr Brooks made no reference in this letter to any privacy concerns about an audit.

I don't know if it was my idea initially, but I suggested it to the Premier.

Q: *Okay, so whose idea do you think it was?*

A: *Oh, look I don't know. It may have been mine, may not have. I know we were probably discussing within my office the following day,⁹⁸ "Righto, well, this is obviously gone fairly viral, you could say, or fairly – fairly big, it's not going to – we can't just push this aside, we're going to have deal with something, so ... what are we going to come up with?" So I would ... be hesitant to say I did or didn't come up with it, or say someone else did or didn't, it was part of a discussion around: "let's get this dealt with and then I'll be back in a couple of weeks. Do this, it'll be pretty quick and simple".*

Q: *But from what you just said, a discussion in your office?*

A: *Yeah.*

Q: *As to how best to deal with this, and then that resulted in this letter with the proposal of an audit, that's –*

A: *Yep.*

Q: *- that's essentially where the audit came into being?*

A: *... it's my suggestion to the Premier that let's deal with this and let's do an audit.⁹⁹*

7. Audit of MSS emails

7.1. Establishment of the audit

- [150] The Premier issued a media release on 10 June 2016 stating that Mr Brooks had explained that he had misunderstood Mr Bacon's questions – thinking they related to business dealings only – and that he had accordingly corrected the Parliamentary record. The statement said Mr Brooks had assured the Premier that the email account was used only for personal, non-business related correspondence; however that Mr Brooks had accepted that a perception of a conflict of interest had arisen and that Mr Brooks had agreed that an independent audit would be undertaken of the MSS email account, to confirm the nature of its use. The statement said that the Premier had asked the Crown Solicitor (Alan Morgan) to conduct a thorough audit of Mr Brooks' MSS email account, that he had asked Mr Morgan to provide his report as soon as possible, and that he had been advised that this would take several weeks.¹⁰⁰

- [151] Mr Brooks resigned from Cabinet on 13 June 2016.¹⁰¹

⁹⁸ 10 June 2016.

⁹⁹ Transcript interview with Adam Brooks MP, pp 165–166.

¹⁰⁰ Attachment 22.

¹⁰¹ Attachment 2.

- [152] The Premier subsequently made another statement, announcing Mr Brooks' resignation and stating,

*... we put in place strict protocols to manage Mr Brooks' business situation, and there is no evidence to suggest they were not upheld. Nonetheless, the Crown Solicitor's Audit of Mr Brooks' email account will continue, in order to confirm it was not used in breach of the protocols.*¹⁰²

- [153] The terms of reference of the audit were set by the Premier in a letter to the Crown Solicitor on 14 June 2016. The Premier required the Crown Solicitor to: audit all emails sent to and from Mr Brooks' MSS email account during the time he was a Minister; determine whether any of the emails indicated that Mr Brooks was participating in decisions concerning the operations of MSS; determine whether Mr Brooks was provided information in relation to MSS that was not otherwise in the public domain. The Crown Solicitor was to engage any technical experts required and report as soon as possible, and provide any emails found to be within the scope of the audit to the Premier (and the context of those emails).¹⁰³
- [154] The Premier confirmed in the letter that he had asked for Mr Brooks to take all steps to ensure full access to the relevant MSS emails, and indicated that Mr Brooks would be afforded procedural fairness and a legal representative if he wished during the process.
- [155] The Crown Solicitor in turn wrote to Mr Brooks on 14 June 2016 confirming the terms of reference of the audit.¹⁰⁴
- [156] The Crown Solicitor requested that Mr Brooks instruct MSS to provide access to the email account and all relevant records relating to it (such as mailbox data and details of deleted items that can be recovered). He requested that Mr Brooks provide a copy of that instruction to him together with the contact details of the relevant person at MSS. He requested that the MSS contact should have sufficient authority to give instructions to any third parties to release any data or emails they might hold. He also advised that he intended to engage an independent expert – at that stage an accountancy firm with expertise in the investigation of email accounts – to assist him in the audit.
- [157] The Premier referred to the letter he sent to the Crown Solicitor in Parliament on 16 June 2016. He said that the issue at hand was,

*... whether or not Mr Brooks utilised that email address for business-related activities that would put him into conflict with his ministerial responsibilities.*¹⁰⁵

¹⁰² Attachment 23.

¹⁰³ Attachment 24.

¹⁰⁴ Attachment 25.

¹⁰⁵ Hansard, House of Assembly, 16 June 2016.

- [158] Later that day, the Premier provided further detail to Parliament about the terms of reference of the audit:

[T]he purpose of the audit is to establish whether Mr Brooks was using the MSS email account in breach of the protocol we established and that is to conduct business operations.

...

I am happy to table the letter I have written to the Crown Solicitor which clearly states that in relation to the allegations raised regarding the use of Mr Brooks' private email account during the time in which he served as a minister in my Government, during which time he was subject to the protocols, and following discussions with the secretary of the Department of Premier and Cabinet, we would like Mr Morgan, the Crown Solicitor, to work with Mr Leigh Sealy, the former Solicitor-General, to audit all emails sent and received from the account during the time in which Mr Brooks was a minister with the Government. This is specifically to determine whether any incoming or outgoing emails from the account during this period indicate that Mr Brooks was participating in decisions concerning the operation of Maintenance Systems Solutions or that he was provided information in relation to MSS that was not otherwise in the public domain.¹⁰⁶

7.2. Mr Brooks' response to the audit

- [159] Mr Brooks advised the Crown Solicitor on 17 June 2016 that he had received the notification of the audit and was seeking legal advice.¹⁰⁷
- [160] The evidence indicates that, at this time, neither the Crown Solicitor nor the Premier were aware of the status of Mr Brooks' marriage and how it would impact the audit.
- [161] Mr Brooks and his lawyer (Timothy Williams) sought further advice from Bruce McTaggart SC about the audit. The advice from Mr McTaggart was:

Clearly it is in your interests to have an audit that will vindicate you. To do so the audit needs to address the issue of whether the receipt or sending of any email messages was unlawful or improper.

On the other hand an audit with inadequate terms of reference will inevitably lead to a witch hunt with no proper outcome.

It is critical that the audit have not only clearly defined terms of reference but a clearly defined procedure.

The procedure is important because there are obligations of privacy in respect of persons who have sent you private or confidential emails. This extends to your immediate family.

¹⁰⁶ Ibid.

¹⁰⁷ Attachment 26.

The proposed terms of reference are not adequate and have every prospect of leading to a witch hunt with the consequences set out above and leave you open to breaching confidentiality obligations in respect of senders of emails.¹⁰⁸

- [162] Mr McTaggart suggested that the audit's terms of reference were not legally precise, and raised a concern that it was inevitable and reasonable in the circumstances that Mr Brooks would have some contact with MSS when a Minister, but this had the capacity to cause Mr Brooks difficulty. Mr McTaggart considered the Crown Solicitor's letter to Mr Brooks:

In my opinion wording taken from the correspondence is not an appropriate basis for the terms of reference in relation to the audit for the following reasons:

- a. The matters the subject of correspondence all had the aim of ensuring that the Code of Conduct was complied with. The critical issue is whether the Code of Conduct was complied with and therefore that should be the framework for the terms of reference.*
- b. That correspondence was clearly not drafted with the aim of being legally precise.*
- c. It is obvious that with the sale of your shares and appointment of a new director there would be inevitably situations where you would have to have communication with the company.*
 - i. Given the accounting requirements in relation to private companies there would be significant amounts of information that prospective purchasers may be interested in which the agent would need to provide in relation to the company.*
 - ii. You would retain memory of a significant number of matters which the company would inevitably need to have recourse to over a period of time. You for example may have had discussions with agents, employees or customers, the recollection of which the company may need. You may have a recollection of where information could be accessed.*

None of the foregoing demonstrate an involvement in managing or operating the company yet a literal interpretation of words taken out of context in that correspondence could occasion unintended difficulty.

- [163] On 20 July 2016, Mr Brooks forwarded the Crown Solicitor's letter to Ms Brooks.¹⁰⁹ Mr Brooks recalled that he informed Ms Brooks of the audit as MSS was 'a company that was formed during the marriage and built jointly during the marriage' and consequently that it,

[didn't] matter who owns the shares it's a joint asset under the family law, and I was advised that she was effectively a party and therefore I was required to provide at least some information to her on that. That was the advice, right, and that's what I did.¹¹⁰

¹⁰⁸ Attachment 27. Mr Brooks has waived any legal privilege over the use of the advice.

¹⁰⁹ Attachment 28.

¹¹⁰ Transcript interview with Adam Brooks MP, pg 171.

[164] On 2 August 2016, Mr Brooks advised the Crown Solicitor that his legal representative had received correspondence from Ms Brooks raising concerns with the audit and its terms. The correspondence from Ms Brooks was not obtained by the investigator, but excerpts from it were referred to in the provided correspondence from Mr Williams. Mr Brooks advised the Crown Solicitor that he understood that his legal representative (Mr Williams) had updated the Crown Solicitor on these issues. Mr Brooks indicated he remained keen for the matter to be progressed.¹¹¹

[165] Mr Williams wrote to the Crown Solicitor on 3 August 2016. He referred to a meeting involving Mr McTaggart, Mr Williams, the Crown Solicitor and Mr Sealy where Mr Morgan had explained that he did not draft the audit's terms and that his instructions at the time did not provide for him to amend them.¹¹² Mr Williams quoted the concerns underpinning Ms Brooks' objections to the audit that were raised in a letter from her legal representative:

We are further instructed that for the audit to be undertaken, unimpeded access to all emails sent to and from the email account in question are required including all deleted emails. Ms Brooks is very concerned as to the personal consequences which might flow not only to her and to Mr Brooks but also to their teenage daughters from any disclosure of "personal" matters which may be disclosed in emails.

...

Our client does not consent to an audit being undertaken in any circumstances, on the basis that she wishes to ensure her family's privacy is maintained, and that there is no damage occasioned to the company, which is and remains a matrimonial asset.

[166] Mr Williams suggested that the audit should be based on the Premier's initial advice to Parliament on 16 June 2016, that being 'whether or not Mr Brooks utilised that email address for business-related activities that would put him into conflict with his ministerial responsibilities'. He argued that the

... terms of an audit which are so wide that could include confidential information about a private company relevant to a property settlement are obviously flawed. Disclosure could impact on the value of the company and its trading. I could not advise my client it would be in any way appropriate that he should override Ms Brooks' objections (even if he could lawfully do so).

[167] Mr Williams drafted some alternative, revised terms of reference that might overcome the objections of Ms Brooks and his own concerns. Mr Williams described this as a relatively simple process:

1. MSS is asked to consent to access by an IT consultant to its server so that a list is produced showing the emails and the received emails, ie what appears in the inbox and outbox listings.

2. The list is provided to the Crown Solicitor however each entry on the list remains confidential until the recipient or sender (other than Mr Brooks) waives confidentiality. The Crown Solicitor will seek a waiver from each such person.

¹¹¹ Attachment 29.

¹¹² Attachment 30.

3. All entries on that list itself remain confidential until the person who received the email from Mr Brooks or who sent the email to Mr Brooks consents to the disclosure of the entry on the list and the content of the email itself (for the sake of clarity where a person's email has been forwarded by another person the consent of the person whose email was forwarded is required in respect of the forwarded email).

4. The Crown Solicitor is provided with copies of all emails in respect of which confidentiality has been waived under no. 3 above.

5. The Crown Solicitor excludes all emails which could not possibly be relevant.

6. Of those emails of possible relevance to the terms of the audit Mr Brooks is given the reason why the email might be of relevance and an opportunity to respond.

7. If there is an email that the Crown Solicitor is satisfied establishes that Mr Brooks used in the email account for business related activities that put him into conflict with he then ministerial responsibilities as Minister for Mining then:

i. The ministerial responsibility that is conflicted must be stated;

ii. How the email conflicted with such duty must be stated (to the extent possible given the privacy of any third party which has not been waived).

[168] Mr Brooks gave evidence that he was conflicted about the audit. His legal advice was that the terms of the audit were potentially harmful to him, his family and the value of MSS,¹¹³ and he shared Ms Brooks' concerns about the harm the audit could cause his family and MSS (as a matrimonial asset).¹¹⁴ Equally, he was mindful of the damage the issue was causing him and the Government, however he considered that there was no material conflict of interest and that the matter was being raised by the Opposition for political purposes.¹¹⁵

7.3. The status of the audit

[169] Mr Morgan has confirmed that he has not had access to any of Mr Brooks' MSS emails. He confirmed that the audit was in abeyance due to the objections raised by both Mr and Ms Brooks, and that he should not engage in legal debate with the lawyers for Mr and Ms Brooks about this issue.¹¹⁶

[170] The revised terms proposed by Mr Williams have not been considered or implemented by Mr Morgan.

[171] As it seemed the abeyance would continue, alternative resolutions were discussed by Mr Johannes and others. It was recommended by Mr Johannes that the Acting Secretary of the Department of State Growth (Bob Rutherford) could review any official decisions made by Mr Brooks when Minister for Mining, to examine whether he had diverted from departmental advice.¹¹⁷

¹¹³ Attachment 27; Transcript interview with Adam Brooks MP, pg 175.

¹¹⁴ Transcript interview with Adam Brooks MP, pg 171.

¹¹⁵ Ibid, pg 176.

¹¹⁶ Phone conversations with Mr Morgan, 18 July, 24 July 2017.

¹¹⁷ Meeting with Mr Johannes, 12 August 2016.

- [172] Mr Rutherford conducted a review of such decisions. He advised the Premier that Mr Brooks made thirteen decisions as a member of Cabinet, and ten of these were under the Mining portfolio. He noted that one Minute relating to the day-today management of Mineral Resources Tasmania was listed for completeness only, and was not put before the Minister for decision or discussed with him or his office.
- [173] Mr Rutherford confirmed that he was satisfied that the remaining decisions were made in accordance with the Department's recommendations, and seven of these were supported by a decision Minute.¹¹⁸
- [174] Similar checks to those conducted by Mr Rutherford were requested of the then Acting Secretary of the Department of Justice by the Commission in relation to Mr Brooks' Building and Construction portfolio. These checks were undertaken and the Acting Secretary advised that there was no evidence that Mr Brooks made decisions that were inconsistent with departmental advice.¹¹⁹

¹¹⁸ Attachment 31.

¹¹⁹ Attachment 32.

PART C – Analysis

8. Mr Brooks' involvement with MSS while a Minister

8.1. What do the MSS emails show Mr Brooks' involvement in MSS to be?

- [175] Mr Brooks' MSS email account contained non-business related correspondence between Mr Brooks and a range of entities and people. It also has received spam.
- [176] The MSS email account also contains emails – received and sent by Mr Brooks – that relate to the operations of MSS and related businesses. The issue to consider is what these emails show about Mr Brooks' involvement with MSS, particularly in light of what was expected and required of him as a Minister.
- [177] Mr Brooks explained the circumstances and nature of the emails identified by the Commission as being suggestive of an ongoing involvement by him in the relevant business interests. He said that the emails did not reflect a material conflict of interest and did not show he was 'managing' and 'controlling' MSS. He said that he believed there was no expectation that he should not be involved in the 'operation' of MSS:

Q: It could be perceived by some that these emails reflect involvement in the operations and management of MSS. Do you have a response to that?

A: ... I think if ... someone appraises themselves of the facts they will see that it doesn't involve in the operation and management of MSS. It – what they do show is actually a ... fact that I'm not managing things. I'm asked for information which I provide but I'm not certainly managing and controlling the company. I don't think there are any there that would indicate that, so I think if people, or if anyone were to make an assumption that, one: there's a material conflict of interest in there, which, in my opinion, there's not, but two: these are material – ongoing or management and control of the business then, I think if you actually read each one in the context of what they were, one intended, and two what – what the outcome was, I think they'll find that it absolutely proves that they are not management and control.

Q: What about the operation of the business?

A: Well it says "operation and control" ... I haven't seen anything that doesn't say "operation only" it says "operation and management" but again, taking that into account, which is consistent with the requirement that I didn't have any operation and control, again, I would say it is all about historical information that only I was privy to, I was being asked for information, not making decisions, other than anything that would only be required of a shareholder, nothing provided that wouldn't be provided to ... a shareholder of a privately owned company that this was.¹²⁰

- [178] The word 'control' raised in this context by Mr Brooks is the first time this word was referenced by any party. The word 'control' was not used in the Protocol or in any of the correspondence from and to the Premier. Mr Brooks' reference to the term 'control' reflects what he saw as the outcome of the steps he had taken. The

¹²⁰ Transcript interview with Adam Brooks MP, pp 72–73.

evidence suggests that Mr Brooks did reduce his involvement and influence in MSS and he did step away in part from the operations and management of MSS. He did not see himself as being in control of MSS.

- [179] Although Mr Brooks took some steps to distance himself from MSS and remained committed to divestment, any expectation that he have no communication or interaction with MSS was an impractical expectation. As observed by his legal counsel when the audit was proposed: *'it is obvious that with the sale of your shares and appointment of a new director there would be inevitably situations where you would have to have communication with the company'*.¹²¹ This argument is based on Mr Brooks' long-term involvement in MSS until his appointment to Cabinet, making it problematic for MSS to function without some interaction with its founder and former sole director and shareholder. As Mr Brooks' marital separation and related proceedings progressed, interaction by him in relation to the main matrimonial asset became increasingly difficult to avoid.
- [180] It was within these circumstances that Mr Brooks was required to take care to ensure the objectives spelt out in the Protocol and the expectations of the Premier in letters to Mr Brooks were complied with.
- [181] Mr Brooks gave evidence that MSS was the major matrimonial asset.¹²² He explained in his statutory declaration that he was obliged to communicate with MSS at times. He outlined the general rationale that he felt he *'had a legal obligation to not diminish the value of the matrimonial assets and make disclosure to [his] ex-wife in relation to these assets which included MSS'*.¹²³
- [182] He further stated:

Given that I had been the sole director prior to my appointment and given the complexity of the business and the short time frame in which I gave control to Mr Crawford it was necessary, on a few occasions, to supply answers to his and other's queries.

...

*I gave the information. I did not make a decision. I did not direct a decision. On supply of the information, Mr Crawford or Mr Andrew Nourse, the Operations Manager, made all relevant decisions. I was also conscious of my fiduciary duty as the immediate past director to supply requested information to the incoming director.*¹²⁴

- [183] Mr Brooks' view was that he complied with the intention of the Protocol and the Premier's expectations:

I absolutely maintain that I didn't, in my belief and understanding, break - not only the protocols - but the commitment and intent of what was required, and in particular, in the management and control of the business. What though, given my experience as a former director, as the owner of MSS, I always understood that or interpreted to be

¹²¹ Attachment 27.

¹²² Transcript interview with Adam Brooks MP, pg 22.

¹²³ Statutory Declaration by Adam Brooks MP, pg 7.

¹²⁴ Ibid.

*decision making to a ...key point, and the reason for that is, as the owner and director and manager of the business before I was appointed, I did make the decisions of management and operation. To me, the management and operation of a business is the decision making of that business of that ... the way the business operates, the decisions, not only on employees or whoever, ... on all sorts of things, from direction to leases to – to whatever, and ... whilst for me ... I absolutely maintain that I did not, in my mind, and I ... still do not believe ... that I exercised any management and control of the business or of the operations ... or as required, ... I did also take my view that that included decision making or was decision making related as well.*¹²⁵

- [184] Mr Brooks' unwavering evidence that he has not been involved in the management and in operational decision making of MSS when he was in Cabinet, that his involvement with MSS at this time was based on what he felt he was obliged to do and was in line with the intention of the Protocol, requires analysis. To do this, Mr Brooks' explanation of each email issue – referenced D1-D19 – was considered.¹²⁶ Mr Brooks' explanation for each was provided in his statutory declaration and is provided below in italics.

Email D1

*E-mail D1 is an invoice from a client of Maintenance Consulting Professionals. The invoice pre-dates significantly my Ministerial appointment and thus the e-mail relates to an issue that pre-dates my appointing ("overlapping issue"). Mr Crawford had carriage of the issue at the time of the e-mail and was simply querying this issue as to historical facts and matters that only I knew as the sole prior director ... Obviously, there was a need to liaise with Mr Crawford in the process of him taking over control of these various issues from me in my former capacity as the sole director. It is clear from the e-mail that Mr Crawford had taken over the issue and in no way was I attempting to direct him or assuming management or operational control of the issue.*¹²⁷

- [185] Although these emails appear to involve an MSS operational matter, Mr Brooks' suggestion that he was not directing Mr Crawford or others or assuming management or control of the matter at hand presents as reasonable and accurate. These emails do not appear to be contrary to the Protocol, the Premier's expectations or to Mr Brooks' undertakings.

Emails D2

These e-mails involve a query in relation to Mr Peter Bryant's remuneration rate negotiated prior to my Ministerial appointment. I had developed the Snatcher software in or about 2009. The software had been little used since its development as a printing solution. Mr Bryant had been retained to write the program. He had been retained to manage the program and provide technical support. There had been few sales of this program over the subsequent six years. Prior to my appointment as Minister there

¹²⁵ Transcript interview with Adam Brooks MP, pg 101.

¹²⁶ The emails are contained in Attachment 19.

¹²⁷ Statutory Declaration by Adam Brooks MP, pg 8.

*was an ongoing issue as to the remuneration rate of Mr Bryant and the ownership of the intellectual property of the software had not been determined. In addition it had become relevant as a potential asset in the matrimonial property proceedings between my former wife and myself. My limited contact with Mr Bryant was directed to finalisation of the ownership of the intellectual property and how it would be split. Other than refining this issue which needed to be attended to as part of the matrimonial proceedings and as potentially part of my ultimate divestment of the company, I had no other involvement during the material time. My communication with Mr Bryant during the material time was primarily as to the split of the intellectual property.*¹²⁸

- [186] The emails about finalising the split of intellectual property were relevant to Mr Brooks' marital separation and his divestment. It is also the case that these emails show Mr Brooks driving negotiations with Mr Bryant about the split. The finalisation of the ownership of intellectual property and how it would be split may relate to his separation and divestment; however, the splitting of intellectual property was also an operational decision for MSS. As such, this matter could have, and should have, been dealt with by Mr Brooks' business manager and the independent agent, as required under the Protocol. Mr Brooks should not have been involved.
- [187] In one instance on 13 March 2016, Mr Brooks let Mr Crawford know confidentially that he told Mr Bryant, *'I am seeking some advice ... as I won't be relinquishing the full IP. I'm not overly happy about relinquishing any of the IP, however given our relationship I was prepared to go to 50%'*.¹²⁹ Mr Brooks was telling Mr Crawford what he had decided. He was not leaving this decision to Mr Crawford.
- [188] There is no evidence that Mr Bramich (Mr Brooks' independent agent under the Protocol) dealt with Mr Crawford on this matter.
- [189] Although it may be relevant to Mr Brooks' marital and divestment proceedings, the emails marked D2 present as involvement by Mr Brooks in the 'management and operation' of MSS, with Mr Brooks participating in and exerting influence over MSS operational decisions.

Emails D3

*These e-mails in fact show divestment of my control. These e-mails show an issue being resolved between Mr Bernie Regan and Ms Emily Hollister, a freelance graphic designer. The reference of speaking to me pre-dates the material time and shows that I was divesting my control. The reference to "Brooksy" in the 24 February 2016 e-mail complains that I did not involve myself.*¹³⁰

- [190] Although these emails appear to involve an MSS operational matter, Mr Brooks was copied into the emails and the emails do not reflect any active involvement other than that. The reference to a busy Mr Brooks being supposed to organise this matter last week should be considered in light of that being the week that he was appointed to

¹²⁸ Statutory Declaration by Adam Brooks MP, pp 8–9.

¹²⁹ Attachment 33.

¹³⁰ Statutory Declaration by Adam Brooks MP, pg 9.

Cabinet. These emails do not appear to be contrary to the Protocol, the Premier's expectations or to Mr Brooks' undertakings.

Emails D4

*Again these emails relate to a pre-existing issue overlapping my exiting as a director and appointment as a minister. The issue involved the departure of the manager of the business branch of the company when I was a director. The company was vacating its premises in Brisbane as a consequence of a decision made months earlier. I was a signatory to the earlier lease. My signature was needed on the surrender documents as the original signatory. I was at times in this email exchange asked for some original documents that I had signed as a director and the solicitor advised me of some of the terms in the "surrender" documentation. I in no way managed the issue after my appointment and the decision had already been made.*¹³¹

[191] Mr Brooks' explanation is reasonable and is an accurate description of the nature of the emails. These emails do not appear to be contrary to the Protocol, the Premier's expectations or to Mr Brooks' undertakings.

[192] There is no D5 email due to an oversight by the investigator.

Emails D6

*This e-mail chain commencing shortly after Mr Crawford's appointment as the sole director draws to my attention a range of overlap issues. Mr Crawford needed some backgrounding on and in order for him to resolve some existing issues as he had assumed the control and the running of these issues and also raises issues involving the necessary structural re-arrangements consequent on my ceasing to be the Director. Many of these issues are not related to MSS.*¹³²

[193] These emails involve direct communication between Mr Brooks and his business manager about a range of issues, including MSS operational matters. In interview, Mr Brooks said that he believed the marital separation and settlement proceedings required him to be involved in these issues given MSS was the main matrimonial asset. He suggested that this was the case regarding the D6 emails. He denied that the emails reflected any activity outside of the Protocol or the Premier's expectations:

It goes again to the management and operation of these businesses. I have not made a decision in any of those. ... I am happy to go through every single line item of that email and we can discuss the context and what it was about, ... and what the response was. I may have provided information that had been made when I was ... director, ... and those decisions have been determined, but they were all so important in the context again of the matrimonial asset split. So, without getting into too much overarching detail, ... if you look at the matters around the asset split, ... the biggest matrimonial asset in the divorce proceedings was MSS ...

...

¹³¹ Ibid.

¹³² Ibid.

Now, as you would probably know, and everyone would know, or most people would know, that when ... you value these assets they look at things such as liabilities and balance sheets and things like – legal liability, annual leave, taxation liability, pay as you go liability, all those sorts of things contribute to the valuation of that specific asset and then the valuation of, I suppose, and at the end of the day, number one, liabilities against assets, and that comes up with a figure, which is then debated.

And each line item or each figure within that is debated as part of the matrimonial process and divorce ... procedures.

...

It's probably – and I haven't got them all in front of me there ... I would suggest, these are related to that, anything that may be MSS related would be linked to those requirements and we can go through them. I have no problem going through them with you and explaining the context of each one, and in reference to that though it also shows I did not make decisions.

...

And the intention of the protocols was to ensure that it was not a – there was number one: a material conflict of interest that I was either benefiting from or could be reasonably seen to be benefiting from and, two, I absolutely was not involved in the management and operation of the business, and I – and I think these emails, whilst they're broad and they range across a whole bunch of different stuff that was required, I – I don't think any of them relate to the management and control of MSS.¹³³

[194] It is accepted that MSS was the main matrimonial asset. However, Mr Brooks was required to not be involved. Mr Crawford and Mr Bramich could have and should have dealt with such issues. There is no evidence that they did so.

[195] Mr Brooks conceded that the D6 emails show his involvement might appear contrary to expectations of the Premier, but said they did not involve the management and operation of MSS:

And again, that was part of the marital separation anyway. So, the next one: ... talking about my personal financial circumstances, and ... I completely get some of the concerns around these, but I think if you look at them from ... the context and from the actual reasoning and not the decisions that were made but the discussion around them, none of them point to operation and management.¹³⁴

[196] On 7 March 2016 Mr Brooks responded to Mr Crawford about a number of operational issues that needed to be discussed. Mr Brooks told Mr Crawford that: he did not like Mr Bryant's last email where he wants the IP; the Boon contract needs to be referred as soon as possible; he thought a management structure announcement should be kept low profile; Mr Crawford needs to be wary about Queensland

¹³³ Transcript interview with Adam Brooks MP, pp 91–92.

¹³⁴ Ibid, pg 93.

discussions; Gary Moss' redundancy timeframe needed be set as soon as possible; and he was happy to go through and finalise Mr Crawford's employment contract.¹³⁵

- [197] On 15 March 2016, Mr Crawford's responses to the above issues reflected Mr Brooks' influence. Mr Crawford complained that Mr Brooks had not resolved the issues as Mr Brooks had agreed to do.¹³⁶
- [198] The D6 emails indicate something more than Mr Brooks providing background information from an overlapping issue. Some of Mr Brooks' answers to Mr Crawford's questions in D6 involve more than providing information; at the very least they are suggestive of Mr Brooks attempting to influence operational decisions.
- [199] Under the Protocol, the issues listed in D6 should have been dealt with by Mr Crawford and Mr Bramich. There is no evidence they did so. This indicates that Mr Brooks was not complying with the terms of the Protocol.

Emails D7

*These e-mails relate to the pre-existing breach of confidentiality issues involving former employees. The e-mails demonstrate Mr Crawford had carriage of the issues. I supplied Mr Crawford a copy of the ASIC search I carried out on the new employer of these former employees. I took no part in the management and operation of this issue after resigning as a director other than providing historical information that I had acquired when I was a director. Mr Crawford had forwarded me the proposed settlement documents, prepared by Page Seager at Mr Crawford's direction, to ensure they were historically correct and accurate and to clarify as I was the director, not Mr Crawford, when these breaches of confidentiality agreements occurred. As to my observation "what happens if they don't sign?" I made that as an interested observer acknowledging Mr Crawford's control. Further acknowledging Mr Crawford was privy to the advice not me.*¹³⁷

- [200] Mr Brooks reinforced this explanation in his interview and again raised the concerns about MSS being the main part of the matrimonial asset pool:

I didn't take part in the management and operation of the issue after resigning as a director, other than providing historical information that I had acquired when I was a director because I was the one that had originally appointed Mr Boon, who has been with the company for ten years, so it was even prior to my election, and then of course, there was some proposed settlement documents prepared by Page Seager at Mr Crawford's direction, not mine, and all he did was ask that they were historically correct. That ... they were correct in content, which I said "yes, they are correct" and he then sent them out, and I think it also probably shows, and again, I've put this in my statutory declaration, that where I've actually asked what happens if they don't sign, it's a general observation because I was interested in, I don't know what would happen, I think that shows I wasn't even privy to the advice that he'd got or the discussions he'd had. He'd been handling the issue but this matter was one of the

¹³⁵ Attachment 34.

¹³⁶ Attachment 35.

¹³⁷ Statutory Declaration by Adam Brooks MP, pp 9–10.

*biggest risks to the asset and the matrimonial asset pool, and ... I would have been called as a witness in legal proceedings if it proceeded to court. Now, it didn't because Mr Crawford handled it, as you can clearly see, I was just asked for clarification ... or to ensure that the information was accurate, given that I was the only one that had it in my head.*¹³⁸

- [201] The Commission accepts that checking documents for accuracy from when Mr Brooks was the director does not reflect involvement or influence in the management and operations of MSS. Mr Brooks' response to Mr Crawford that the letter 'looks ok' suggests that this is what he was doing.¹³⁹ However, Mr Brooks' subsequent emailed questions: '*What if they don't sign? I wouldn't? I take it the other option with i solutions restraint wasn't quite there? Give me a ring if u need in 10 or so*'¹⁴⁰ goes beyond an interested observer acknowledging Mr Crawford's control. Rather, it presents as Mr Brooks participating in and influencing MSS operations in a way that should have been left to Mr Bramich.
- [202] Mr Brooks' later comment to Mr Crawford on 15 April 2016 to a response from the lawyers of the former MSS employees: '*... interesting response. I think there may be some room to work ...*'¹⁴¹ also indicates Mr Brooks' participation and influence in this operational matter, and which also should have been left to Mr Bramich.

Email D8

*This e-mail had nothing to do with the management and operation of MSS. Mr Davidson is eccentric and has periodically e-mailed me usually with a diatribe about employee disloyalty and other complaints.*¹⁴²

- [203] Mr Brooks' explanation presents as an accurate description of what the emails with Mr Davidson are about. These emails do not appear to be contrary to the Protocol, the Premier's expectations or to Mr Brooks' undertakings.

Emails D9

TPS is a sportswear store. It was a family entity. As far as I was aware it was part of a discretionary trust owned by family members.

TPS was entirely independent of MSS and had no conceivable connection with my Ministry. It was not a relevant business. I had not undertaken to cease involvement in the management of the business, nor was I asked to. Neither the Premier nor his Chief of Staff ever requested that I cease my involvement with TPS. TPS was entirely separate from and had no connection with MSS. I did not undertake to divest myself. I only undertook to divest myself of the MSS companies and was required to divest

¹³⁸ Transcript interview with Adam Brooks MP, pg 82.

¹³⁹ Attachment 36.

¹⁴⁰ Ibid.

¹⁴¹ Attachment 37.

¹⁴² Statutory Declaration by Adam Brooks MP, pg 10.

*myself and not participate in the management and operation of the MSS companies on the basis they may give rise to actual or perceived conflict of interest.*¹⁴³

- [204] Mr Brooks' account of the emails about TPS is reasonable and accurate. These emails do not appear to be relevant or contrary to the Protocol, the Premier's expectations or to Mr Brooks' undertakings.

Email D10

*This e-mail and financial documentation evinces a change over of management. Mr Crawford wanted to make the other senior members of the management group aware of the finances of the company. The financial information was private to me as the sole shareholder. The senior management group had not previously been privy to this information but as Mr Crawford was now managing the business he wanted the senior management group to be privy and requested my permission to distribute this private and personal financial information.*¹⁴⁴

- [205] Mr Brooks' explanation that Mr Crawford was requesting Mr Brooks' permission to share private and personal information in this email (dated 10 March 2016) presents as reasonable. However, a decision by a director (Mr Crawford) on whether to distribute financial information with MSS's senior management presents as an operational decision. It is not known whether Mr Brooks responded to this request for permission and it is accepted that the finances of MSS are tied to Mr Brooks' finances; however this also presents as an issue on which Mr Crawford should have liaised with Mr Bramich.

Emails D11

*These e-mails concern a pre-existing issue involving a long overdue debt arising from work I commissioned before my Ministerial appointment with the civil contractor referred to – MDG. The work was not carried out for MSS but a private family entity and was not paid for by MSS. Mr Crawford has told the contractor that I would speak to him to resolve the issue given it was a private matter.*¹⁴⁵

- [206] Mr Brooks' explanation of these emails presents as credible and accurate. These emails do not appear to be contrary to the Protocol, the Premier's expectations or to Mr Brooks' undertakings.

Emails D12

These e-mails in fact demonstrate the relinquishing of my managerial and operational role in the company. The e-mails were also relating to my divestment of the company. Obviously the press were referring to my divestment and the staff, particularly senior staff, were concerned and needed to be reassured. It was important to maintain the staff's confidence to ensure the maintenance and value of the company was not diminished and to ensure the stability of the ongoing employment of the staff was not

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

diminished. Obviously the change to Mr Crawford's control and to residing more management responsibility in the senior management group was a matter that was delicate and was important to maintain staff goodwill and ensure the business was not needlessly destabilised or diminished. The way in which this transfer of managerial responsibility was communicated was the subject of the e-mails in this category. I suggested a form of wording but you will notice that I made it clear to Mr Crawford and Mr Andrew Nourse "ultimately it will be what you think and what you decide". This was part and parcel of my cessation of my managerial and operational role.¹⁴⁶

[207] Mr Brooks expanded on his explanation at interview:

Now the challenge within the MSS asset is that the vast majority of labour within it is a casual workforce, and ... from ... what I understand, it was becoming a concern that there needed to be some sort of correspondence sent out. I did not send the correspondence out. I did not decide that it would go out. I was asked for, I suppose, an opinion, and again, based on ... the foundations of advice that I was not allowed to withhold information ... I provided a suggestion but I make very, very clear, and I made it clear that this was not my decision and it was up to Mr Nourse and Mr Crawford to decide what to do. But the intention of it was to make sure that I wasn't acting contrary to the assets value due to the very, very frank advice – legal advice I'd received, it's privileged, but I'd received that I was not allowed to damage the asset or deliberately minimise it. So, I think, again, it doesn't show in any way the operational management, all I've done is – is suggested this is how you could do it, but it's not my decision and you guys do what you want – and I've said that very very clearly.¹⁴⁷

[208] The evidence shows that Mr Brooks made it clear to Mr Nourse and Mr Crawford that the decision on how to communicate the structure to staff was their decision. However, Mr Brooks' email to both men on 13 March 2016 suggests a draft of an email to senior management of MSS.¹⁴⁸ Although he left it to them to make a decision on whether to send his draft or something different, Mr Nourse and Mr Crawford did not change the draft,¹⁴⁹ and sent it to MSS senior management on 14 March 2016.¹⁵⁰ Mr Brooks was blind-copied into this email.

[209] Although the decision to send out the email drafted by Mr Brooks does not present as a decision made by Mr Brooks, his drafting of that email is, at the very least, involvement in MSS's operations, and evidence of him influencing an operational decision. That Mr Brooks was deliberately sent this email by Mr Nourse reinforces the view that Mr Brooks was an influential stakeholder – at least in Mr Nourse's mind – in this decision.

[210] Mr Brooks' concern about protecting MSS as a matrimonial asset is acknowledged, but such a concern did not preclude him from abiding by the Protocol and the

¹⁴⁶ Statutory Declaration by Adam Brooks MP, pg 11.

¹⁴⁷ Transcript interview with Adam Brooks MP, pg 85.

¹⁴⁸ Attachment 38.

¹⁴⁹ Attachment 30.

¹⁵⁰ Attachment 39.

Premier's requirements. Again, this is a matter that should have been left to Mr Crawford to deal with.

Email D13

*This relates to a pre-existing issue. Mr Crawford needed to know what I had said and what I had promised to an employee well prior to the material time.*¹⁵¹

[211] Mr Brooks was asked about D13 in his interview:

*Yeah, this is requesting information from ... a predetermined discussion I had with Sonia, that dated back before I was the Minister. She was making claims that I had made commitments whilst I was the director relating to her salary and package, and all I did was confirm ... the conversation I had. Again, you can see I have not made a decision in relation to this. I don't even know what the outcome was, wouldn't have a clue. I was just asked whether what she claims I have said was true, and you will see there I've said ... I would look at it, but no ... promises around increases in her salary, and I would say this conversation would more than likely date back to the previous year, that's how long ago this issue. I – from my memory, was, so again, all I've been asked for here is historical information that only I knew and I only I was privy to, and that's also detailed in the statutory agreement. ... But I'd also add, I did not make a decision. ... I didn't make the determination and I didn't amend the contract or anything like that.*¹⁵²

[212] Mr Brooks did not make a decision in relation to the person's contract and he did, as he said, inform Mr Crawford about what he had promised her. However, Mr Brooks also said that Mr Crawford needed to, 'consider hours and out of hours stuff given she needed to be there 9-5 or similar hours. Maybe catch up about it later in the week'.¹⁵³ This is suggestive of Mr Brooks participating in and having influence over MSS operational decisions, contrary to the requirements of the Protocol and the Premier's expectations.

Email D14

*When a change is made to a manager's or employee's role it is documented and needs to be approved by two senior managers. This was an automated workflow system. As inspection of the document will show the start date for the relevant contract amendment was 11 January 2016 and the completion date was 25 January 2016. I understand I had probably approved it on or about 6 January 2016. I have caused enquiry to be made. It appears Mr Regan, the West Australian manager, in error, had re-clicked on the approval link which regenerated the workflow request. I did not take any action at all in relation to the regenerated workflow request and did not approve it during the material time.*¹⁵⁴

¹⁵¹ Statutory Declaration by Adam Brooks MP, pg 11.

¹⁵² Transcript interview with Adam Brooks MP, pg 88.

¹⁵³ Attachment 40.

¹⁵⁴ Statutory Declaration by Adam Brooks MP, pg 11.

- [213] Mr Brooks' explanation of this email presents as credible and accurate. It does not appear to be contrary to the Protocol or the Premier's expectations.

Email D15

This concerns a request for sponsorship of \$250 made to the Queensland office. The request was initially addressed to Ken Pitt, the Queensland Manager, and myself. I ignored it. Ken Pitt then actioned the issue with the Operations Manager Andrew Nourse which is the appropriate chain of command. Mr Nourse contacted me and asked whether the donation to this charity was permissible in the context of political donations. There was no issue as to this. It then appears Mr Nourse e-mailed Mr Pitt having made the decision the company would proceed with the sponsorship.¹⁵⁵

- [214] Mr Brooks' explanation of this email presents as credible and accurate. It does not appear to be contrary to the Protocol or the Premier's expectations.

Emails D16

As to these e-mails:

First a number of these issues concerned TPS and had nothing to do with MSS;

The reference to money required in relation to PAYGW – ATO was a balance sheet query that had arisen as a consequence of the matrimonial property proceedings as obviously the balance sheet for the company was very important in relation to what was the largest asset in the matrimonial pool;

The NAB credit card to the best of my belief related to a personal banking matter;

I have already referred to the Large/Boon/Sullivan letters being the breach of confidentiality issue and is an overlapping issue;

The constitutions for TPS and Xcel Fitness are non-related to MSS and were needed for the matrimonial proceedings;

The lease for Burgess Way related to private real estate and was needed for the matrimonial proceedings;

The ANZ personal loan was a personal banking matter;

The "Sonia contract" has already been dealt with under "D13" and was information required regarding a previous existing remuneration issue;

Mr Crawford was querying what the remuneration rate for Mr Bryant was and the financial arrangements in respect to SAP invoices – these issues were pre-existing issues, pre-dating my appointment as a Minister. I refer to my more detailed evidence dealt with under "D2"; and

The reference to Mr Rod Bramich is to the independent agent who was to oversee management and divestment of the business as required by the Premier and the

¹⁵⁵ Statutory Declaration by Adam Brooks MP, pg 11.

*protocol. I was being queried as to whether Mr Bramich's invoice amount of \$550 was correct.*¹⁵⁶

- [215] Mr Brooks' explanations of most parts of this email present as credible and accurate. Most parts of the email do not appear to be contrary to the Protocol or the Premier's expectations.
- [216] However, the observations made in relation to emails D2, D7 and D13 (above) apply. As such, parts of this email appear to be contrary to the Protocol, the Premier's expectations and Mr Brooks' undertakings. Mr Brooks and Mr Crawford appeared to have discussed issues already raised in D2, D7 and D13 by telephone. Although the exact content of this telephone call is unknown, conversations about Mr Bryant's matter present as involvement in the management and operation of MSS, with participation in decisions and exerting influence in decisions. Any conversation about the Large/Boon/Sullivan letters and the named person's contract reflect participation and influence in MSS decisions.
- [217] These issues should have been dealt with by Mr Crawford and Mr Bramich.

Email D17

*These constitutions of relevant companies were required for my matrimonial proceedings. My ex-wife and my ex-wife's lawyers would communicate directly with Mr Crawford, on occasion, for information relevant to MSS and other companies.*¹⁵⁷

- [218] Mr Brooks' explanation of this email presents as credible and accurate. It does not appear that Mr Brooks has acted contrary to the Protocol or the Premier's expectations.

Email D18

*This e-mail concerns my matrimonial proceedings and ability to settle my wife's claim.*¹⁵⁸

- [219] Mr Brooks' explanation of this email presents as credible and accurate. It does not appear that Mr Brooks has acted contrary to the Protocol or the Premier's expectations.

Email D19

*This is a payroll tax issue ventilated between Mr Crawford and Mr Nourse that I was blind copied into. The e-mails show that the issue was handled by Messrs Nourse and Crawford. I had no input. The issue had the potential to impact on the balance sheet for MSS and accordingly had consequences so far as my matrimonial property claim was concerned.*¹⁵⁹

¹⁵⁶ Ibid, pg 12.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid, pg 13.

¹⁵⁹ Ibid.

- [220] Mr Brooks' explanation of this email presents as credible and accurate. It does not appear that Mr Brooks has acted contrary to the Protocol or the Premier's expectations.

Conclusion emails D1-D19

- [221] Although Mr Brooks felt he was not in control of MSS, this did not mean that he was not involved in the management of MSS and was not exercising influence over any operational decisions. That Mr Brooks was not in control does not necessarily mean that he had removed himself from all management and operational decisions or from participating in decisions concerning the operation of MSS. He did not remove himself from all MSS management and operational decisions and he still participated in MSS operational decisions. This presents as a breach of the requirements of the Protocol and of a subsequent failure to properly inform the Premier of the situation.
- [222] This report has considered Mr Brooks' involvement with MSS based on the different requirements and expectations referenced in the different documents. Rather than attempt to manufacture or introduce a set of requirements and expectations, the MSS emails have been analysed on the basis of the documented requirements and expectations listed in the relevant documents: the Protocol, the Premier's letter, the updates from Mr Brooks to the Premier and the scope of Mr Morgan's audit.
- [223] Emails D2, D6, D7, D10, D12, D13 and D16 indicate Mr Brooks' involvement, influence and participation in MSS that, although not significant in nature, is clearly contrary to what was required and expected of him under the different documents referenced.
- [224] Further, Mr Brooks' advice to the Premier that, by making the appointments of a manager and an independent agent, he had removed himself from all management and operational decisions is contradicted by D2, D7, D13 and D16. He may not have been the decision maker, but he was not removed from these decisions.
- [225] Mr Brooks was blind-copied into email conversations between Mr Crawford and MSS staff in D19 and a number of other emails involving operational decisions. Although in the case of D19, as in some other cases, Mr Brooks appears to have not become actively involved in the emails, the blind-copying suggests that he continued to have involvement and influence in MSS decisions. One way for Mr Brooks to have prevented such perceptions would have been for him to simply close his MSS email account.
- [226] It is important to note that the Crown Solicitor's audit was aimed at determining whether Mr Brooks was provided information in relation to MSS that was not otherwise in the public domain. The vast majority of incoming emails received by arb@mss.com.au were from MSS senior management and staff, and the content of these emails consistently contained private information about MSS.
- [227] The MSS emails do not indicate that Mr Brooks had a material conflict of interest when he was a Minister. As noted at [79] and [98] the fact that the Protocol was established demonstrates that at least a perceived conflict of interest was recognised at the time, but in the Commission's view this does not amount to a 'material conflict'

as that term is defined under the Ministerial Code. Mr Brooks' involvement and influence in operational decisions in a company that operates in the mining sector (but is not a mining company per se) do not indicate he had such a material conflict.

Findings

On the basis of the evidence obtained by the Commission, Mr Brooks while a Minister:

- **Although there was no reference to 'control' in any documents relevant to the expectations and requirements of him, Mr Brooks held a view that he was no longer in control of MSS as he had reduced his involvement and influence in MSS and had stepped away in part from the operations and management of MSS.**
- **Had ongoing involvement in the management and operation of MSS, contrary to the Protocol established with the Premier.**
- **Exercised influence over the operational decisions of MSS, contrary to the Premier's written expectations.**
- **Had not removed himself from management and operational decisions of MSS, contrary to his written advice to the Premier.**
- **Was participating in decisions concerning the operation of MSS, as the Crown Solicitor's audit was tasked with determining.**
- **Was provided information in relation to MSS that was not otherwise in the public domain, as the Crown Solicitor's audit was tasked with determining.**
- **Had ongoing involvement in the management and operation of MSS based in part on his concerns about his obligations to protect a significant matrimonial asset.**
- **Had ongoing involvement in the management and operation of MSS based in part on his concerns about his obligations to fulfil his fiduciary obligations as the former sole director of MSS.**

9. Material conflict of interest

9.1. Did Mr Brooks breach the Ministerial Code of Conduct by failing to take reasonable steps to avoid a 'material conflict of interest'?

[228] Analysis of the evidence has shown that Mr Brooks did have an ongoing involvement in the operations and management of his relevant business interests, particularly

MSS. This involvement – although not significant in nature – included influencing and participating in operational decisions.

[229] As a Minister, Mr Brooks was obliged to act in accordance with the Code of Conduct for Ministers. He repeatedly undertook to do so in writing to the Premier.

[230] The existence of the Protocol is indicative of the Premier's recognition that Mr Brooks did have conflict of interest issues as a Minister. However it is necessary to establish whether a 'material conflict of interest' existed as defined in the Code of Conduct for Ministers. The Guidance Notes accompanying the Code of Conduct for Ministers explain what constitutes a 'material conflict of interest':

*A material conflict of interest can exist when a Minister, in carrying out his or her duties is, or reasonably appears to be, improperly influenced by private interests.*¹⁶⁰

[231] In this context, it is important to acknowledge that checks conducted by Mr Rutherford in 2016 showed that Mr Brooks followed Departmental advice in decision-making as Mining Minister.¹⁶¹

[232] As MSS operates within the mining sector, it is arguably in the company's interests that the Tasmanian mining industry is strong. It is also arguable that a Mining Minister has the capacity to promote and facilitate a strong local mining industry. However, the administrative nature of Mr Brooks' Ministerial decisions, and the fact that they were in line with Departmental advice, means that there is no evidence that Mr Brooks was improperly influenced by his business interests in making those decisions.

*A material conflict of interest can exist when an official decision by a Minister could improperly advantage the Minister or a close relative personally.*¹⁶²

[233] On the basis of the decisions reviewed by Mr Rutherford there are no identifiable consequences from Mr Brooks' decisions that could lead to any improper advantage for Mr Brooks or any of his relatives.

*A material conflict of interest is one that is significant or important or one that a reasonable person would think is important to the Minister's official duties or a decision to be made by the Minister.*¹⁶³

[234] MSS is not a mining company; it has never held a mining lease. When Mr Brooks was Minister only one of MSS's clients was engaged in mining in the state; once appointed to Cabinet Mr Brooks took steps to ensure that MSS ceased dealings with that company as soon as was practicable.¹⁶⁴

[235] Although it is the case that a strong mining industry will generate better economic opportunities for businesses that operate in that sector (such as MSS), the evidence is that MSS has provided software solutions and support to mining companies globally, and also to a number of other industries that are not involved in mining.

¹⁶⁰ Code of Conduct for Ministers Guidance Notes.

¹⁶¹ Attachment 31.

¹⁶² Code of Conduct for Ministers Guidance Notes.

¹⁶³ Ibid.

¹⁶⁴ Attachment 11; Transcript interview with Adam Brooks MP, pp 37–38.

- [236] Mr Brooks' involvement in MSS did not directly relate to any mining leases or mining operations in Tasmania (or elsewhere). MSS was not involved in or impacted by any regulatory matters that were considered by Mr Brooks as Minister. His involvement with MSS in February to June 2016 was not significant in nature, and although it was involvement contrary to what was expected of him (which is analysed elsewhere in this report), it was not sufficiently significant or important so as to be real or substantial or to have had the capacity to influence (or appear to influence) Mr Brooks' conduct as Mining Minister.
- [237] Mr Brooks has held a view that the perception that he had a material conflict of interest has been raised and promoted by opposition parties for what he sees as purely political purposes¹⁶⁵, and this has then been the subject of resultant media reporting. The perception that Mr Brooks' interests in mining were greater than they really were was driven not just by his political opponents. It was given further weight by occasional public comments by the Premier¹⁶⁶ and even Mr Brooks himself,¹⁶⁷ perhaps to promote the suitability of Mr Brooks to the portfolio.
- [238] The requirement that he divest himself of MSS was, in Mr Brooks' view, an overreaction as there was no actual conflict of interest; however he chose to sell MSS so he could serve in Cabinet despite having to sell the business he had established.
- [239] In correspondence with the Premier, Mr Brooks referred to his situation as a potential conflict of interest, and this was the basis for his undertakings to the Premier. The Code of Conduct for Ministers states that a potential or perceived conflict of interest may also constitute a material conflict of interest.¹⁶⁸ However, as MSS is not a mining company and that it operates in other sectors, coupled with the nature of Mr Brooks' involvement with MSS (as outlined earlier), this does not give rise to any reasonable perception or potential interest of sufficient substance so as to form a 'material conflict of interest'. His involvement does not present as the type of involvement to influence his Ministerial conduct.

Findings

On the basis of the evidence obtained by the Commission:

- **Mr Brooks' decision-making about how to avoid conflicts of interest was influenced in part by a longstanding view that he had no material conflict of interest, and that the assertion that he did was politically motivated misinformation.**
- **Mr Brooks' ongoing involvement in the operations and management of MSS when a Minister at no stage amounted to a material conflict of interest as defined in the Code of Conduct for Ministers.**

¹⁶⁵ Transcript interview with Adam Brooks MP pp 25, 30, 31, 33, 36, 37, 46, 49, 64 & 152.

¹⁶⁶ Attachment 9.

¹⁶⁷ Attachment 5.

¹⁶⁸ Code of Conduct for Ministers, pg 3.

- **Mr Brooks has not failed to take reasonable steps to avoid a material conflict of interest.**

9.2. Did Mr Brooks breach the Code of Conduct for Ministers by failing to take reasonable steps to resolve a material conflict of interest?

[240] As has been discussed above, although Mr Brooks did have an ongoing involvement in MSS's operations and management, he did not by virtue of this have a material conflict of interest.

[241] As no material conflict of interest existed, Mr Brooks was not required under the Code of Conduct for Ministers to take reasonable steps to resolve his conflict.

Findings

On the basis of the evidence obtained by the Commission:

- **Mr Brooks' decision-making about how to resolve conflicts of interest was influenced in part by a longstanding view that he had no material conflict of interest, and that the assertion that he did was politically motivated misinformation.**
- **Mr Brooks' ongoing involvement in the operations and management of MSS at no stage amounted to a material conflict of interest as defined in the Code of Conduct for Ministers.**
- **Mr Brooks has not failed to take reasonable steps to resolve a material conflict of interest.**

9.3. Did Mr Brooks, by not advising the Premier of his ongoing involvement in the operations and management of his business interests whilst a Minister, breach the Ministerial Code of Conduct by failing to disclose a material conflict of interest?

[242] As discussed previously, although he did have an ongoing involvement in MSS's operations and management, Mr Brooks did not by virtue of this have a material conflict of interest.

[243] As no material conflict of interest existed, Mr Brooks was not required under the Code of Conduct for Ministers to take reasonable steps to disclose his conflict.

[244] It follows that he has not breached the Ministerial Code of Conduct in relation to this.

Findings

On the basis of the evidence obtained by the Commission:

- **Mr Brooks' decision-making about his disclosure of conflicts of interest was influenced in part by a longstanding view that he had no material**

conflict of interest, and that the assertion that he did was politically motivated misinformation.

- **Mr Brooks' ongoing involvement in the operations and management of MSS at no stage amounted to a material conflict of interest as defined in the Code of Conduct for Ministers.**
- **Mr Brooks has not failed to take reasonable steps to disclose a material conflict of interest to the Premier.**

10. Advice to Premier and Parliament

10.1. Did Mr Brooks, by not advising the Premier of his ongoing involvement in the operations and management of his business interests whilst a Minister, perform his Ministerial functions in a way that was dishonest or improper?

[245] There was some inconsistent terminology and language used in the Protocol, correspondence, and the terms and scope of the proposed audit by the Crown Solicitor.

[246] Despite the use of different terminology, it is apparent that the Premier had certain expectations in the way that Mr Brooks should conduct himself in the circumstances of his conflicts of interest. The various documents referred to indicate that the Premier expected the resignations and the appointments of the business manager and the independent agent would assist Mr Brooks to ensure he: had no involvement in the management and operation of the relevant businesses;¹⁶⁹ exercised no influence in operational decisions;¹⁷⁰ not participate in operational decisions; and not be provided information about MSS that was not otherwise publicly available.¹⁷¹ Mr Brooks undertook to the Premier to remove himself from all management and operational decisions of relevant businesses.¹⁷²

[247] The resignations and the appointments of Mr Crawford and Mr Bramich were the means to an end, not an end in itself. The end was compliance with the Premier's expectations.

[248] Despite these appointments, Mr Brooks continued to be involved in a way that was contrary to the Premier's expectations.

[249] The Protocol and the Premier's letter both made it clear that Mr Brooks' resignations as a director and the appointments of a manager and an independent agent were required. These particular requirements were met.

[250] The Protocol said that the resignations and the appointments should ensure no involvement, in any form, formal or otherwise, in the management and operation of

¹⁶⁹ Attachment 12; Attachment 14.

¹⁷⁰ Attachment 14.

¹⁷¹ Attachment 24; Attachment 25.

¹⁷² Attachment 17; Attachment 18; Attachment 21.

the businesses. The Premier's letter stated that the resignations and the appointments in practice meant that Mr Brooks should take steps to ensure he had no involvement, in any form, formal or otherwise, in the management and operation of the businesses. There is nothing ambiguous about this. The insertion of the words 'in practice' by the Premier in this context makes it even clearer that, for the Protocol to be adhered to, steps that ensured no involvement, in any form, formal or otherwise, in the management and operation of the businesses had to be taken by Mr Brooks.

- [251] It seems likely that Mr Brooks must have had some concerns that his ongoing influence and involvement in the management and operation of MSS was contrary to the objective of Step 2 of the Protocol and the Premier's expectations. However, on 7 March 2016 and 20 May 2016, Mr Brooks advised the Premier in writing that '*I have also removed myself from all management and operational decisions of relevant businesses, by appointing a business manager and appointing an independent agent to deal with the business manager on my behalf.*'¹⁷³ He repeated this advice to the Premier, after Budget Estimates, on 10 June 2016.¹⁷⁴
- [252] Despite the appointments of Mr Crawford and Mr Bramich, Mr Brooks continued to maintain involvement in and exert influence over management and operational decisions of the relevant businesses. Even if this involvement was not of a significant nature, or was required or unavoidable for legitimate reasons,¹⁷⁵ Mr Brooks' written advice to the Premier on these dates was inaccurate and he must have known that to be the case.
- [253] Mr Brooks gave evidence that the Premier was not advised of the specifics of the MSS emails. He explained that this was because the MSS emails were private and did not involve a material conflict of interest with his portfolio:

... in my opinion, they don't constitute a material conflict of interest, they never have and never did. I still consider them to be absolutely private and I think we ... discussed this on the phone,¹⁷⁶ around the fact that I am very, very concerned that this extremely private and confidential information be protected.

...

I didn't see, certainly from my undertaking and discussion, that I had ... breached any of the commitments provided or given or any of the code of conducts, and ultimately, ... if you look at the code of conduct itself, it refers to material conflict of interest, and I've not seen anything in there whatsoever that relates to that, but without labouring the point ... I am of the firm belief that ... certainly I have not discussed the specific contents of these, but I had discussed that I had dealt with some historical matters and non-related entities, and that was never part of the protocol requirement, that wasn't what it was put in there for.¹⁷⁷

¹⁷³ Attachment 17; Attachment 18.

¹⁷⁴ Attachment 21.

¹⁷⁵ That is, his understanding of his fiduciary obligations as a former director and his obligation to protect the main matrimonial asset.

¹⁷⁶ For clarity, Mr Brooks is referring here to a telephone conversation he had with the investigator.

¹⁷⁷ Transcript interview with Adam Brooks MP, pp 99–100.

- [254] It is not clear what discussions Mr Brooks and the Premier had about Mr Brooks having '*dealt with some historical matters and non-related entities*' (as stated above). However, based on the evidence obtained in the investigation, this presents as an understatement of his involvement.
- [255] Further, despite what he may have relayed verbally to the Premier, on 10 June 2016 he wrote to the Premier again and clearly stated that he had no involvement in MSS business matters in that email account. There was no reference to dealing with any 'historical matter and non-related entities' in this letter:
- The MSS email account has been held by me for about a decade. Upon becoming a Minister a filter system was put in place to ensure any business related emails were not accessible or able to be seen by me. ... Since that time I have used the account for personal and non-business related correspondence only, including emails regarding my daughters' school activities and discussions with regard to financial and legal matters relating to my marital separation.*¹⁷⁸
- [256] Mr Brooks' advice to the Premier that a filter system – identified as being a manual process involving Mr Crawford – ensured that any business-related emails were not accessible or able to be seen by him is misleading. Other than the suggestions by Mr Brooks and Mr Crawford that Mr Crawford was filtering emails, there is no evidence to show this actually occurred. Mr Brooks accessed, read and responded to many business related emails.
- [257] Although it may have been Mr Brooks' view that the filter existed to ensure he did not access or see emails that may prompt a material conflict, this explanation does not align with his advice to the Premier on 10 June that '*upon becoming a Minister a filter system was put in place to ensure any business related emails were not accessible or able to be seen by me*'.¹⁷⁹
- [258] While Mr Brooks may have had no material conflict of interest, and did not subsequently breach the Code of Conduct for Ministers, the Premier's expectations and requirements of Mr Brooks meant that, once in Cabinet, Mr Brooks was obliged to inform the Premier of the full nature of his involvement and influence in MSS.
- [259] On 17 February 2016, before he was formally appointed a Minister, Mr Brooks told the Premier he would take no role in the management of the relevant businesses.¹⁸⁰ This did not happen.
- [260] On three occasions as a Minister (7 March, 20 May and 10 June 2016), Mr Brooks assured the Premier in writing that '*I have removed myself from all management and operational decisions of relevant businesses*'.¹⁸¹ This was not the true situation at any of these times. Despite the appointments of Mr Crawford and Mr Bramich, the evidence shows that Mr Brooks did have ongoing involvement in the management and operations of MSS. Mr Brooks must have been aware of the inaccuracy of these

¹⁷⁸ Attachment 10.

¹⁷⁹ Attachment 21.

¹⁸⁰ Attachment 10.

¹⁸¹ Attachment 17; Attachment 18; Attachment 21.

assurances. Mr Brooks was obliged to inform the Premier – who was under the impression that the Protocol was effectively managing the conflict of interest issues – that the stated purpose of the Protocol was not being met. He never did so.

Findings

On the basis of the evidence obtained by the Commission:

- **Mr Brooks' advice and updates to the Premier about his involvement in the operation and management of his business interests was influenced in part by a longstanding view that he had no material conflict of interest, and that the assertion that he did was politically motivated misinformation.**
- **Mr Brooks omitted to accurately inform the Premier about the true nature of his ongoing involvement in the operation and management of his relevant business interests while he was a Minister.**
- **Mr Brooks did not provide the Premier on 7 March, 20 May or 10 June 2016 with an accurate update about his ongoing involvement in the operations and management of his relevant business interests.**
- **Mr Brooks did not properly advise the Premier on 7 March, 20 May or 10 June 2016, that the objective of the Protocol – that he have no involvement, in any form, formal or otherwise, in the management and operation of any of the relevant businesses – was not being met.**
- **Mr Brooks did not provide the Premier with an accurate account of how a filtering system prevented him from accessing or seeing business-related emails on 10 June 2016.**

11. Deletion of MSS emails

11.1. Did Mr Brooks delete emails from his email account on 9-10 June 2016 to avoid detection of his ongoing involvement in the operation and management of MSS?

[261] On 9–10 June 2016, Mr Brooks accessed and reviewed his MSS email account. He captured, forwarded and deleted a significant number of emails from that account. A number of these emails involved marital, family and other related personal issues.

[262] Mr Brooks' explanation that this activity was motivated by a desire to keep private and sensitive family and financial communications from being made public presents as credible and genuine. His evidence that he was not in a good state of mind at the time due to private family matters also presents as credible and genuine, and is likely to have impacted on his thought processes.

[263] Following service of a notice for production of all Mr Brooks' MSS emails by the Commission, it was agreed that MSS could remove any emails (including emails that

were deleted on 9–10 June 2016) which contained only private domestic communications between Mr Brooks and Ms Brooks and which contained no communications or information relevant to the operation of MSS. This led to the removal of 125 emails from that produced for the Commission, with a total of 15,178 emails (including spam) produced. Although the personal and private nature of the 125 removed emails is accepted, these figures provide important context to Mr Brooks' evidence that he deleted the emails due to his concerns about the publication of family matters i.e. only a small fraction of the MSS emails were solely such communications.

- [264] Analysis of the MSS emails showed that the majority of the emails that were captured, forwarded and deleted by Mr Brooks were suggestive of his involvement in the management and operation of MSS, and his influence over MSS's operational decisions. Some of these emails did touch on marital, family and other related personal issues, and others did not relate to family or personal issues in any way.
- [265] Mr Brooks' answers to questions in Budget Estimates on 9 June 2016 prompted an immediate flurry of criticism from the Opposition and were widely reported and commented upon in the media. Although he rejected that he had done anything wrong and felt that the issue had been promulgated for political purposes, Mr Brooks was aware that his confused answers would fuel ongoing speculation and criticism.
- [266] Although Mr Brooks has rejected any suggestion that the emails reflected his involvement in the management and operation of MSS, it is likely that Mr Brooks would have been aware that there was a risk that others – including the Premier, whom he had repeatedly advised in writing that he was not involved in the management of operations of MSS – may perceive the emails differently.
- [267] Mr Brooks must also have been mindful at the time that a few hours earlier he had told Estimates that '*I do not use (it) for anything other than personal use. I obviously need to make sure that is clear*'.¹⁸²
- [268] Mr Brooks' concerns about protecting his family privacy do present as being genuinely held. However, the circumstances as they existed also suggest that Mr Brooks was, at least in part, motivated by a desire to prevent the emails from being obtained and read by other parties with an interest in whether he had dealt with his conflicts of interest effectively, including the Premier.
- [269] Mr Brooks must have been aware that, if exposed, the MSS emails could threaten his Cabinet position, embarrass the Government and potentially damage his political career. Such concerns present as an obvious motivation for his activity that night.
- [270] Mr Brooks' evidence that he removed the emails from his MSS email account until 'due process' had been established¹⁸³ should also be considered in light of the fact that once due process had been established (in the form of the audit of the account by Mr Morgan), Mr Brooks did not advise anyone, other than Mr Crawford, of the

¹⁸² Hansard, House of Assembly Estimates Committee A, 9 June 2016.

¹⁸³ Transcript interview with Adam Brooks MP, pg 132.

deletions or that emails of possible interest were now located in another private email account.

- [271] Mr Brooks rejected a suggestion that he deleted the emails, preferring to use terminology such as 'relocated'¹⁸⁴ and 'quarantined'.¹⁸⁵ It is a fact that he double-deleted the emails, and Mr Brooks' use of other words to describe that action presents as an attempt to downplay or justify what he did.
- [272] Mr Brooks said that he was concerned that the emails may have been misinterpreted and so deleted them.¹⁸⁶ It seems that Mr Brooks' actions were aimed at preventing any person from reading and interpreting them in a way that was different to his interpretation, particularly if that different interpretation was potentially damaging to his interests. Concern about possible interpretations or readings of the emails that differed to that of Mr Brooks does not present as a legitimate explanation of this action.

Findings

On the basis of the evidence obtained by the Commission,

- **Mr Brooks accessed, collated, forwarded and then deleted a number of MSS emails on the evening of 9-10 June 2016.**
- **Mr Brooks informed no person, other than Mr Crawford, that he had deleted MSS emails on the evening of 9-10 June 2016.**
- **Mr Brooks' decision-making on the evening of 9-10 June 2016 when accessing his MSS email account was influenced in part by a longstanding view that he had no material conflict of interest, and that the assertion that he did was politically motivated misinformation.**
- **Mr Brooks' decision to delete the MSS emails was motivated by:**
 - **genuine concerns about the protection of his family's privacy;**
 - **genuine concerns about protecting ongoing marital proceedings;**
 - **genuine concerns about protecting private business information that could have been detrimental to the interests of MSS if publicly released;**
 - **his concern that the emails had the potential to cause him damage as he was aware that they could be interpreted as evidence of his involvement in the management and operation of MSS, his influence over MSS's operational decisions, and that he**

¹⁸⁴ Statutory Declaration by Adam Brooks MP, pg 14.

¹⁸⁵ Transcript interview with Adam Brooks MP, pg 122.

¹⁸⁶ Statutory Declaration by Adam Brooks MP, pg 14.

had not removed himself from management and operational decisions of MSS; and

- **preventing detection of evidence of his involvement in the management and operation of MSS, his influence over MSS's operational decisions, and that he had not removed himself from management and operational decisions of MSS when he was a Minister.**

12. Independent audit

12.1. Did Mr Brooks take steps to hinder an audit by the Crown Solicitor of Tasmania that may have detected evidence of misconduct through his ongoing involvement in the operation and management of his business interests, and in doing so did he perform his functions as a Member of Parliament in a way that was dishonest or improper?

[273] By the time the terms of reference of Mr Morgan's audit had been formalised, Mr Brooks had resigned as Minister and returned to the backbench. If Mr Brooks had engaged in any misconduct after 13 June 2016, it was as an MP, not as a Minister.

[274] Mr Brooks raised the possibility of an independent audit in his letter to the Premier on 10 June 2016. It is unclear when this letter was written, however the evidence indicates that it was prepared on 10 June 2016. This is just hours after Mr Brooks had deleted many of the MSS emails. Mr Brooks appeared to have no concerns about privacy at this point.

[275] The common definition of 'hinder' is to '*make it difficult for (someone) to do something or for (something) to happen*'.¹⁸⁷ Mr Brooks' activity on the evening of 9-10 June 2016 – specifically the deletion of evidence (emails) that was relevant to an audit – had the potential to hinder the audit subsequently proposed by Mr Brooks, particularly as he had not advised the Premier (or any other person within Government) of the deletions. An audit, without access to deleted and highly relevant material, is fundamentally compromised.

[276] When Mr Brooks raised the concept of an independent audit on 10 June 2016, he was yet to seek legal advice.

[277] The Premier's letter to Mr Morgan on 14 June 2016 established the terms and scope for the audit. Mr Morgan was tasked with auditing all emails sent from and received into Mr Brooks' arb@mss.com.au account for the period that Mr Brooks was a Minister, to determine whether he was participating in decisions concerning the operations of MSS, and whether he was provided information in relation to MSS that was not otherwise in the public domain.

[278] Despite the variations in the specific wording of the Protocol, the letters and the terms and scope of the audit, the Premier's expectations remain clear: that Mr Brooks was

¹⁸⁷ <https://en.oxforddictionaries.com/definition/hinder>.

not to be involved in any way in MSS management and operational decisions. It follows that the audit established by the Premier was designed to determine whether Mr Brooks had complied with this expectation.

- [279] The Premier advised Mr Morgan that he had informed Mr Brooks that if he wished to appoint a legal representative then this would be appropriate.¹⁸⁸
- [280] Mr Morgan informed Mr Brooks by letter on 14 June 2016 of the audit's terms and scope, as set by the Premier. Mr Morgan made it clear that he sought unimpeded access to the email account, including all deleted emails, and advised Mr Brooks that he intended to engage an expert to assist in any technical issues.¹⁸⁹
- [281] The evidence shows that an independent audit – initially suggested by Mr Brooks on 10 June 2016 with no reference to the detail of such an audit and no apparent privacy concerns – had by 14 June 2016, become a comprehensive audit with clear questions at its heart. The audit anticipated access to deleted items that had the potential to be very damaging to Mr Brooks. The audit's terms and scope made it clear that the Premier expected definitive answers about Mr Brooks' emails.
- [282] The Premier tasked Mr Morgan to report if any emails within the scope of the audit existed, attach the emails to the report, and indicate their context. The reference to the engagement of a technical expert by the Premier and Mr Morgan's request that Mr Brooks arrange unimpeded access to all emails, including deleted emails, shows the audit aimed to answer questions about Mr Brooks' email activity. The reference to deleted emails indicates an awareness that emails of interest may have been deleted.
- [283] Mr Morgan's audit, had it obtained the emails subsequently obtained by the Commission, in all likelihood would have identified that Mr Brooks had been participating in decisions concerning the operations of MSS and had been provided information in relation to MSS that was not otherwise in the public domain, contrary to the Premier's expectations.
- [284] Mr Morgan's reporting on such evidence would likely have had damaging ramifications for Mr Brooks' Ministerial and political future. Although Mr Brooks has maintained that he had done nothing wrong and had nothing to be concerned about as he had no material conflict of interest,¹⁹⁰ it is probable that he was aware that there was a risk that Mr Morgan, the Premier and others could view his MSS involvement while a Minister as being contrary to the Protocol and the Premier's expectations, and that this had the potential to damage him.
- [285] After Mr Brooks had sought legal advice – as he was encouraged to do by the Premier – he advised Mr Morgan that he would provide a response after further

¹⁸⁸ Attachment 24.

¹⁸⁹ Attachment 25.

¹⁹⁰ Transcript interview with Adam Brooks MP, pg 176.

advice had been obtained.¹⁹¹ Around this time, Mr Brooks advised Ms Brooks (by that stage residing interstate) of Mr Morgan's audit and its scope and terms.¹⁹²

- [286] On 3 August 2016, Mr Brooks' legal representative (Mr Williams) advised Mr Morgan that the fundamental issue at hand was whether Mr Brooks had breached his obligations as a Minister not to act in a material conflict of interest.¹⁹³
- [287] Mr Williams also advised Mr Morgan that Ms Brooks did not consent to the audit, noting the concerns of Ms Brooks' legal representative that the audit risked compromising their family and daughters' privacy, as well as potentially causing harm to MSS (as a significant matrimonial asset).
- [288] Mr Williams suggested to Mr Morgan that he could not advise Mr Brooks that he could or should override Ms Brooks' objections, and even if he could override them, he could not advise Mr Brooks to participate, as the audit's scope was too wide.
- [289] Ms Brooks' refusal to consent to the conduct of the audit appears genuine, unwavering and was based on legal advice. The evidence suggests that what was in the best interests of Mr Brooks' political career was not a particularly important consideration for Ms Brooks, and that it was unlikely that Mr Brooks – even if he wished to – could not have done anything to dissuade her from this view
- [290] In the face of Ms Brooks' opposition, the family and financial issues at stake, and the very broad term and scope of the audit, is not surprising that Mr Brooks' lawyers advised him that it would be inappropriate to override Ms Brooks' objections, even if he lawfully could do that, or that he should give his consent to what they saw as an inappropriate and ill-defined audit.
- [291] On the other hand, the Premier's expectations of no involvement by Mr Brooks in the management and operation of MSS – not just referencing a material conflict of interest – appear to have determined the audit's term and scope. Mr Morgan was not in a position to amend the scope and terms of the audit.
- [292] Despite the apparent damage the audit was likely to have inflicted on Mr Brooks if it had been able to proceed, the refusal of both Mr Brooks and Ms Brooks to consent to the audit was based on legal advice. This directly led to the audit being in long-term abeyance. In the circumstances, it was not improper for Mr Brooks to refuse to consent to the terms of the audit.
- [293] Mr Brooks provided Mr Morgan (through Mr Williams) with a revised audit process. This presents as an attempt by Mr Brooks to progress and address the conflict of interest issues whilst protecting the confidentiality and privacy concerns that had been raised. As noted above, Mr Morgan was not in a position to revise the terms given he had no authority to do so.
- [294] The evidence shows that the emails that were potentially damaging to Mr Brooks, and of particular potential interest to the Premier, had been "double-deleted" by Mr Brooks

¹⁹¹ Attachment 26.

¹⁹² Transcript interview with Adam Brooks MP, pp 169–170.

¹⁹³ Attachment 30.

(that is, they were deleted from his Inbox, and then deleted from the 'Deleted Items' folder). They were accessed for the Commission in a server backup, following technical advice from the Independent Broad-based Anti-corruption Commission (Vic) as to how the schedule of the notice to produce should be worded in order to ensure the production of all emails, including deleted items. The revised terms of the audit suggested by Mr Williams refer to allowing access to what appears in the inbox and outbox listings.¹⁹⁴ Analysis of the MSS emails produced showed that there are no emails indicative of Mr Brooks' involvement in the inbox and outbox listings, or in any drafts, sent items, deleted items or any other customised mailboxes. Further, the revised terms make no reference to accessing any deleted emails.

[295] Mr Brooks has strongly denied that access to the deleted items would have posed a problem as access to the MSS server would have enabled the identification of the deleted emails. He was adamant that the deleted items would have been available to the auditor on these revised terms:

Q: At point 1 it says 'A list is produced showing the sent emails and received emails, i.e. what appears in the inbox and the outbox listings'.

A: Yeah, absolutely ... that is the log, that is what you've been provided and what you've gone off.

Q: What about the deleted items?

A: Well, that would be in the log. That ... from my understanding, the log that you were provided shows the traffic in and out of the account, that's what that is. Obviously then they would all be produced, they were never deleted.

LEGAL REPRESENTATIVE: Can I seek just to draw your attention, Mr Brooks, to the word 'server', does that assist in your answer?

A: Yes, it does. It was always referenced to the server where this information was held, so it wouldn't matter what my desktop showed it was about the server where this information was stored and where the information that was provided to you came from, from certainly my understanding.

Q: It's probably my IT knowledge coming through again.

A: Yeah, look – and it could even be Mr Williams' IT knowledge but it was certainly the intention and there was never any argument that there should not be what I call the log produced of all traffic in and out of that server account or that account produced for independent verification. It was ... paramount to this whole thing. The challenge was the handling and management of the information that that would produce.

Q: Either way, what you've told us is that any audit would have been inclusive of the emails which you have deleted from the front end account but would have still sat on the server, that's what you've told us.

¹⁹⁴ Ibid.

A: *Absolutely, absolutely.*¹⁹⁵

- [296] MSS was able to recover the deleted emails to comply with the specific requirements of the Commission's specifically worded coercive notice to produce records, and this shows that the deleted items were retrievable and available in the right circumstances. Technical advice was sought about the revised scope put forward by Mr Williams and this casts doubt on the suggestion that the emails would have been obtained under that scope.¹⁹⁶
- [297] The revised scope proposed to provide a log of email traffic only. A log would not contain any relevant content of the emails recorded on it. Whether or not such a log would contain any reference to the deletion of the emails on 9–10 June 2016 would depend on the date range of the log. It is unknown what parameters (if any) would affect this. If access to the server was granted by MSS, it would only provide access to the .pst files for associated email accounts as they existed as of the date of access. That is, they would show what the email accounts looked like to their owners as of the time of extraction; and without reliance on specialist digital forensic tools they would not contain emails deleted from the Deleted Items folder. Furthermore, those specialist tools would only be effective where the deleted items had not already been removed through 'compacting' of the relevant database – a process which can occur automatically or manually and would have the effect of making server backups the only possible means of recovering any deleted items. Therefore, in the absence of reference to 'deleted items' or 'backups', the revised scope would have addressed legal and privacy issues but would not appear to ensure the capacity to extract or produce the deleted emails.¹⁹⁷
- [298] That the Commission was able to ensure access to the deleted emails because the coercive notice to produce the material specifically required data to be extracted from backup files is important. The MSS emails were produced via access to server backups, not the server itself. The Commission's notice, unlike Mr Williams' proposal, specifically referenced backups in its schedule. The MSS IT Manager summarised the work he completed to produce the MSS emails as follows:

Adam Brooks Mailbox has been recovered from a backup dated 19/06/16. (Only weekly backups are available from this time) Items that have been deleted from the 'Delete Items' have been recovered with assistance from Microsoft, and are in a new folder under Adams inbox called '1. Recovered'. Emails outside the date range 18/02/16 and 13/06/16 have been removed.

I gave you laptop MSS0187 with these emails on them. You have removed emails outside the scope of what is required and returned the laptop to me.

I have then exported A 'PST' File of Adam Brooks mailbox from the laptop

¹⁹⁵ Transcript interview with Adam Brooks MP, pp 150–151.

¹⁹⁶ From the High Tech Unit of the Independent Broad-based Anti-corruption Commission.

¹⁹⁷ Summary of advice from the High Tech Unit of the Independent Broad-based Anti-corruption Commission.

*Logs of all emails sent to and From Adam between 18/02/16 and 13/06/16 have been gathered and provided in 2x Separate files. Logs have been generated using Microsoft Exchange 2010 'Get-MessageTrackingLog' function, with the assistance from Microsoft.*¹⁹⁸

- [299] Mr Brooks indicated that access to the server would enable the recovery of deleted emails. Mr Brooks said that the actual emails themselves are saved onto the server¹⁹⁹ (in addition to any log of email traffic). If this is correct, it still does not guarantee that access to the server would make deleted items obtainable, as when the Commission obtained the deleted items from MSS, the IT Manager had to access a backup of the server in order to retrieve them. This provides insight as to the structure of their server. The server may well hold emails currently stored in email accounts for a certain amount of time, but not in perpetuity, as the server would quickly fill up and MSS would be required to continually purchase newer and bigger servers. It is likely the server will hold emails for a period, maybe until it reaches its storage capacity, and then when new emails come in they are likely to be saved over the emails already in the server. This means that in order to ensure access to emails saved on the server it would be necessary to access the server before the relevant emails are overwritten. This would presumably be a small window of opportunity, and consequently that is why MSS has taken backups of the server to ensure that overwritten emails were not lost forever. This is why MSS was able to obtain the emails as specifically required under the notice.
- [300] On the basis of the steps taken by the MSS IT Manager to produce all the emails, and a strict reading of Mr Williams' proposal that '*MSS is asked to consent to access by an IT consultant to its server so that a list is produced showing the sent emails and the received emails, i.e. what appears in the inbox and outbox listings*', it cannot be guaranteed that the deleted emails that were produced to the Commission under its specifically phrased notice referencing backups, would have been available for Mr Morgan's audit.
- [301] Beyond these technical issues, the steps proposed in the revised terms to overcome confidentiality concerns (particularly seeking the consent of other parties in the email conversations of interest) are very heavy in process and would almost inevitably create further complications and delay that would have continued to stall any audit.

Findings

On the basis of the evidence obtained by the Commission:

- **Mr Brooks proposed an audit of his email account on 10 June 2016 to the Premier knowing that he had deleted emails from that account on 9–10 June 2016 that indicated he had: ongoing involvement in the operation and management of MSS, exercised influence over the**

¹⁹⁸ Email from MSS IT Manager Mr Cocker to Mr Crawford, 19 December 2017.

¹⁹⁹ Transcript interview with Adam Brooks MP, pp 150–151.

operational decisions of MSS, and not removed himself from the management and operational decisions of MSS.

- **Mr Brooks did not advise the Premier, and the Premier was not aware, that he had deleted emails from that account on 9–10 June 2016 that indicated he: had ongoing involvement in the operation and management of MSS, had exercised influence over the operational decisions of MSS, had not removed himself from the management and operational decisions of MSS, was participating in the decisions concerning the operation of MSS, and was provided information in relation to MSS that was not otherwise in the public domain.**
- **Mr Brooks did not advise the Crown Solicitor, and the Crown Solicitor was not aware, that he had deleted emails from that account on 9–10 June 2016 that indicated he was participating in the decisions concerning the operation of MSS and was provided information in relation to MSS that was not otherwise in the public domain.**
- **The scope and terms of the audit were prepared by the Premier and reflected the Premier's expectations of Mr Brooks while Mr Brooks was a Minister.**
- **The Crown Solicitor was not in a position to revise the scope and terms of the audit set by the Premier.**
- **The scope and terms of the audit of Mr Brooks' email account set by the Premier in all likelihood would, if it had been conducted, have identified evidence that Mr Brooks had participated in decisions concerning the operation of MSS and that he was provided information in relation to MSS that was otherwise not in the public domain.**
- **The identification of evidence that Mr Brooks had participated in decisions concerning the operation of MSS and that he was provided information in relation to MSS that was otherwise not in the public domain would have indicated to the Premier that Mr Brooks did not have a material conflict of interest, but had not complied with the Protocol and the Premier's expectations, and had provided inaccurate advice to him in writing.**
- **Mr Brooks' non-consent to the scope and terms of the audit was based on legal advice he received. This directly led to the audit being in long term-abeyance. In the circumstances, it was not improper for Mr Brooks to refuse to consent to the terms of the audit.**
- **The proposed revised terms and scope of the audit by Mr Brooks' legal representatives did not stipulate access to server backups, so would not have guaranteed access to the evidence that Mr Brooks had participated**

in decisions concerning the operation of MSS and that he was provided information in relation to MSS that was otherwise not in the public domain.

13. Misuse of information

13.1. Did Mr Brooks, by his ongoing involvement in the operations and management of his business interests whilst a Minister, misuse information acquired in connection with the performance of his Ministerial functions, and in doing so breach the Ministerial Code of Conduct by using information obtained in the course of his official duties so as to obtain a direct or indirect personal advantage for himself or improperly for any other person or entity not enjoyed by the general public?

13.2. Did Mr Brooks, by his ongoing involvement in the operations and management of his business interests whilst a Minister, misuse information acquired in connection with the performance of his Ministerial functions, and in doing so perform his Ministerial functions in a way that was dishonest or improper?

[302] No evidence has been identified that Mr Brooks misused any information which he acquired as a Minister.

[303] MSS operates in the mining, and other, sectors, but is not a mining company. Although it is not unreasonable to have concerns about possible conflicts arising from Mr Brooks' appointment as Mining Minister due to his background with MSS, it is difficult to construct any realistic hypothetical circumstance as to when information obtained by Mr Brooks as a Minister could have been misused by him.

[304] The review conducted at the time by the Deputy Secretary of the Department of State Growth has confirmed that Mr Brooks did not misuse information.

[305] Mr Brooks took active steps to ensure MSS would not, and would not be perceived to, obtain an advantage by way of his position.

[306] There is no evidence that Mr Brooks used information obtained as a Minister to obtain any benefit or advantage to any party.

Findings:

On the basis of the evidence obtained by the Commission:

- **MSS is not a mining company, rather it operates within the mining sector as well as other sectors.**
- **Mr Brooks did not misuse information acquired in the performance of his Ministerial functions.**
- **Mr Brooks followed departmental advice in his decision making as Mining Minister.**

- **Mr Brooks took steps to ensure MSS would not obtain, or would not be perceived as obtaining, any advantage or benefit from his Ministerial position.**

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